



WESTMINSTER  
COLORADO

January 7, 2002  
7:00 P.M.  
AGENDA

**NOTICE TO READERS:** City Council meeting packets are prepared several days prior to the meetings. Timely action and short discussion on agenda items is reflective of Council's prior review of each issue with time, thought and analysis given.

Members of the audience are invited to speak at the Council meeting. Citizen Communication (item 7) and Citizen Presentations (item 14) are reserved for comments on items not contained on the printed agenda.

1. **Pledge/National Anthem**
  - A. Pledge of Allegiance Boy Scout Troop #98
  - B. National Anthem sung by Westminster High School A Cappella Group
2. **Roll Call**
3. **Swearing in of Mayor Moss**
4. **Selection of New Mayor Pro Tem and Swearing in  
15 Minute Recess**
5. **Consideration of Minutes of Preceding Meetings**
6. **Presentations**
  - A. Proclamation re Mary Harlow
  - B. Recognition of Transportation Commission members Bob June and Dottie Urban
  - C. Proclamation re Jefferson County Library 50<sup>th</sup> Anniversary
7. **Citizen Communication (5 minutes or less)**
8. **Report of City Officials**
  - A. City Manager's Report
9. **City Council Comments**

The "Consent Agenda" is a group of routine matters to be acted on with a single motion and vote. The Mayor will ask if any citizen wishes to have an item discussed. Citizens then may request that the subject item be removed from the Consent Agenda for discussion separately.

10. **Consent Agenda**
  - A. Special Real Estate Legal Counsel
  - B. November Financial Report
  - C. Excess Worker's Compensation Insurance
  - D. Golf Course Food and Beverage Concessionaire Agreement
  - E. Standley Lake Pre-Construction IGA and Owners Representative Service IGA
  - F. Water and Sewer Modeling Contract
  - G. CB No. 76 re Grant Award Appropriations into Open Space Fund (Dixon-Atchison)
  - H. CB No. 78 re 2002 Carryover Capital Supplemental Appropriation (Moss-Atchison)
11. **Appointments and Resignations**
12. **Public Hearings and Other New Business**
  - A. TABLED Resolution No. 71 re Carter Annexation Petition (Harmony Park)
  - B. TABLED Quail Creek/Bull Canal Relocation
  - C. Public Hearing re 112<sup>th</sup> & Federal Partnership PDP 2<sup>nd</sup> Amendment
  - D. 112<sup>th</sup> & Federal Partnership 2<sup>nd</sup> Amended Preliminary Development Plan
  - E. Resolution No. 1 re Account Transfers within Capital Improvement Projects
13. **Old Business and Passage of Ordinances on Second Reading**
  - A. CB No. 74 Church Ranch Bus Center Business Assistance Amendment (Dixon-McNally)
  - B. CB No. 77 re Coors Field Sales Tax Refund (Hicks-Moss)
14. **Citizen Presentations (longer than 5 minutes) and Miscellaneous Business**
  - A. City Council
  - B. Executive Session
15. **Adjournment**

## **GENERAL PUBLIC HEARING PROCEDURES ON LAND USE MATTERS**

- A.** The meeting shall be chaired by the Mayor or designated alternate. The hearing shall be conducted to provide for a reasonable opportunity for all interested parties to express themselves, as long as the testimony or evidence being given is reasonably related to the purpose of the public hearing. The Chair has the authority to limit debate to a reasonable length of time to be equal for both positions.
- B.** Any person wishing to speak other than the applicant will be required to fill out a “Request to Speak or Request to have Name Entered into the Record” form indicating whether they wish to comment during the public hearing or would like to have their name recorded as having an opinion on the public hearing issue. Any person speaking may be questioned by a member of Council or by appropriate members of City Staff.
- C.** The Chair shall rule upon all disputed matters of procedure, unless, on motion duly made, the Chair is overruled by a majority vote of Councillors present.
- D.** The ordinary rules of evidence shall not apply, and Council may receive petitions, exhibits and other relevant documents without formal identification or introduction.
- E.** When the number of persons wishing to speak threatens to unduly prolong the hearing, the Council may establish a time limit upon each speaker.
- F.** City Staff enters A copy of public notice as published in newspaper; all application documents for the proposed project and a copy of any other written documents that are an appropriate part of the public hearing record;
- G.** The property owner or representative(s) present slides and describe the nature of the request (maximum of 10 minutes);
- H.** Staff presents any additional clarification necessary and states the Planning Commission recommendation;
- I.** All testimony is received from the audience, in support, in opposition or asking questions. All questions will be directed through the Chair who will then direct the appropriate person to respond.
- J.** Final comments/rebuttal received from property owner;
- K.** Final comments from City Staff and Staff recommendation.
- L.** Public hearing is closed.
- M.** If final action is not to be taken on the same evening as the public hearing, the Chair will advise the audience when the matter will be considered. Councillors not present at the public hearing will be allowed to vote on the matter only if they listen to the tape recording of the public hearing prior to voting.



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
January 7, 2002

**SUBJECT:** Swearing In Ceremony for Mayor Moss and new Mayor Pro Tem

**Prepared by:** Michele Kelley, City Clerk

**Summary Statement**

Recently, Mayor Nancy Heil announced her resignation effective December 31, 2001. Per City Code and City Charter, the current Mayor Pro Tem will move into the position of Mayor and fill the unexpired term of the Mayor. Ed Moss was elected by Council on November 12<sup>th</sup>, to serve in the position of Mayor Pro Tem.

City Council has scheduled the first Council meeting of 2002 for January 7 and the swearing-in ceremony for Mayor Moss is scheduled as part of this meeting.

Mayor Pro Tem Moss has requested Kathleen Bowers, Judge of the County Court for the City and County of Denver to swear him in as Mayor.

Subsequent to the Mayor being sworn-in, City Council is requested to select a new Mayor Pro Tem.

**Expenditure Required:** \$ - 0 -

**Source of Funds:** N/A

**Recommended City Council Action**

Mayor Moss will be sworn into office by The Honorable Kathleen Bowers, City and County of Denver County Court Judge. After the selection of the new Mayor Pro Tem, this Councillor will be sworn into office as Mayor Pro Tem by The Honorable Kathleen Bowers.

**Policy Issue(s)**

Should Council select a Mayor Pro Tem at this time?

**Alternative(s)**

Since there is currently a vacancy in the position of Mayor, this action is required to officially swear into office the new Mayor, select a new Mayor Pro Tem and swear the new Mayor Pro Tem into office.

**Background Information**

The City Council meeting will begin with the Pledge of Allegiance, followed by the Westminster High School a cappella group singing The National Anthem. This will be followed by the Swearing-In Ceremony of the new Mayor, the selection of the Mayor Pro Tem, and swearing in of the new Mayor Pro Tem.

Mayor Pro Tem Moss has requested the Honorable Kathleen Bowers, Judge of the County Court for the City and County of Denver be present to swear him in as Mayor.

The election of a Mayor Pro Tem is required to be accomplished by secret ballots without nominations. The Honorable Kathleen Bowers will also be available to swear-in the newly selected Mayor Pro Tem for a two year term. Council will then take a recess for a few minutes before proceeding with the Council meeting prepared agenda.

**PROCEDURES FOR CITY COUNCIL MEETING**

The following sequence of events is to take place:

1. Upon completion of the swearing-in of the Mayor, the Mayor states that the first order of business shall be the election of the Mayor Pro Tem. This is to be accomplished by secret ballot and without nomination. In case of a tie, the City Clerk will disclose the names of the tie contestants and another ballot shall be taken. Until one person has received a majority, successive ballots will be taken.
2. The City Clerk announces the selection of the Mayor Pro Tem.
3. The Mayor requests that the newly elected Mayor Pro Tem be sworn-in by the Honorable Kathleen Bowers.
4. The newly sworn in Mayor Pro Tem will take their seat at the Council table and the Mayor presides over the remaining portion of the Council meeting.

Respectfully submitted,

J. Brent McFall  
City Manager

CITY OF WESTMINSTER, COLORADO  
MINUTES OF THE CITY COUNCIL MEETING  
HELD ON MONDAY, JANUARY 7, 2002 AT 7:00 P.M.

PLEDGE OF ALLEGIANCE/NATIONAL ANTHEM

Boy Scout Troop #98 led Council, Staff and the audience in the Pledge of Allegiance and the Westminster High School A Cappella Group sang God Bless America.

ROLL CALL

Mayor Pro-Tem Moss, Councillors Atchison, Dixon, Hicks, Kauffman, and McNally were present at roll call. Brent McFall, City Manager; Martin McCullough, City Attorney; and Michele Kelley, City Clerk, were also present. Absent none.

SWEARING IN OF MAYOR

Denver City and County Court Judge Kathleen Bowers was called to administer the Oath of Office of Mayor to Ed Moss.

SELECTION AND SWEARING IN OF MAYOR PRO TEM:

Mayor Moss stated that the election of Mayor Pro Tem would be by written ballot with no nominations. The first ballot showed a majority vote for Herb Atchison. Mayor Pro-Tem Atchison was sworn into office by Denver City and County Court Judge Kathleen Bowers.

RECESS:

At 7:25 p.m., the Mayor called for a recess and Council reconvened at 7:47 p.m.

CONSIDERATION OF MINUTES:

Mayor Pro-Tem Atchison moved, seconded by Hicks to accept the minutes of the meeting of December 17, 2001 with no additions or corrections. The motion carried unanimously.

PRESENTATIONS:

Mayor Moss and Councillor Dixon presented Mary Harlow with a proclamation recognizing her dedication, hard work, and commitment as Rocky Flats Coordinator for the City of Westminster.

Mayor Moss presented certificates of appreciation to Bob June and Dottie Urban for their service on the Transportation Commission.

Mayor Moss presented Bill Knot, Jefferson County Librarian, with a proclamation in recognition of the Jefferson County Library's 50<sup>th</sup> anniversary.

CITY COUNCIL COMMENTS:

Councillor Kauffman congratulated Mayor Moss on his appointment.

Councillor Dixon congratulated Mayor Moss on his appointment. She also clarified her position on the pledge of allegiance being conducted by Boy Scout Troops.

REPORT OF CITY OFFICIALS:

J. Brent McFall, City Manager, requested Council TABLE items 10E, Standley Lake Pre-Construction IGA and Owners Representative Service IGA, and item 12B, Quail Creek/Bull Canal Relocation. He also reported there will be a Special City Council meeting on Tuesday, January 22 solely for the selection of a new Councillor.

CONSENT AGENDA:

The following items were considered as part of the Consent Agenda: Special Real Estate Legal Counsel with Barbara Banks for \$5,000 and Inland Pacific for \$15,000; Financial Report for November, 2001; Ratification of purchase of excess Workers' Compensation Insurance for \$63,289; Concessionaire agreement with Evergreen Alliance Golf Limited for Golf Course Food and Beverages; Standley Lake Renovation Construction Intergovernmental Agreement with the cities of Northglenn and Thornton, Farmers Reservoir and Irrigation Company, and Owner's Representative Service Intergovernmental Agreement with Joseph A. Cesare and Associates for \$123,027; Treated Water Computer Modeling Contract with HDR Engineering for \$145,000; CB No. 76 re Grant Award Appropriations into Open Space Fund; and CB No. 78 re 2002 Carryover Capital Supplemental Appropriation.

The Mayor asked if there was any member of Council or anyone from the audience who would like to have any of the consent agenda items removed for discussion purposes or separate vote. Councillor Dixon asked that the Golf Course Food and Beverage Concessionaire Agreement be removed from the consent agenda. Mayor Pro-Tem Atchison asked that the Standley Lake Renovation Construction Intergovernmental Agreement be removed from the consent agenda.

Mayor Pro-Tem Atchison moved, seconded by McNally to adopt the remaining Consent Agenda items as presented. The motion carried unanimously.

GOLF COURSE FOOD AND BEVERAGE CONCESSIONAIRE AGREEMENT

Mayor Pro-Tem Atchison moved, seconded by Dixon to authorize the City Manager to sign a concessionaire agreement between the City of Westminster and Evergreen Alliance Golf Limited, L.P. for a term of five (5) years. Guy Auxer, Vice-President of Evergreen Alliance Golf Limited was present. Eric Near, 10277 Julian St, addressed Council with questions. The motion carried with a dissenting vote from Councillor Dixon.

STANDLEY LAKE PRE-CONSTRUCTION IGA/OWNERS REPRESENTATIVE SERVICE IGA

Mayor Pro-Tem Atchison moved, seconded by McNally to TABLE this item. The motion carried unanimously.

TABLED RESOLUTION NO. 71 RE CARTER ANNEXATION PETITION

Mayor Pro-Tem Atchison moved, seconded by Kauffman to remove this item from the table and reject this Resolution since a new annexation petition containing the name and address of the current owner has not been submitted. Upon roll call vote, the motion to reject carried unanimously.

PUBLIC HEARING RE 112<sup>TH</sup> & FEDERAL PARTNERSHIP 2<sup>ND</sup> AMENDMENT TO PDP

At 8:28 P.M. the public hearing was opened on the 2<sup>nd</sup> Amended 112<sup>th</sup> & Federal Blvd Partnership Preliminary Development Plan within the 112<sup>th</sup> & Federal Partnership Planned Unit Development. Dave Shinneman, Planning Director, entered a copy of the Agenda Memorandum and other related items into the record. Kim Straw, David Boschert, and Mike Byrne were present and addressed Council. There was no opposition. The public hearing was declared closed at 8:55 P.M.

SECOND AMENDED 112<sup>TH</sup> & FEDERAL PARTNERSHIP PDP

Councillor Kauffman moved, seconded by McNally to approve the Second Amended 112<sup>th</sup> & Federal Partnership Preliminary Development Plan within the 112<sup>th</sup> & Federal Partnership Planned Unit Development. The motion carried unanimously.

RESOLUTION NO. 1 RE ACCOUNT TRANSFERS WITHIN THE CIP PROGRAM

Councillor McNally moved, seconded by Dixon to adopt Resolution No. 1 authorizing the transfer of \$87,000 from the Foxshire Park account to the Promenade Terrace account. Upon roll call vote, the motion carried unanimously.

COUNCILLOR'S BILL NO. 74 CHURCH RANCH BUSINESS CENTER PHASE III

Councillor Dixon moved, seconded by Atchison to pass Councillor's Bill No. 74 on second reading authorizing the City Manager to execute the amendment to paragraphs 1, 2, and 3 of the Church Ranch Business Center Phase III, Business Assistance Agreement. Mayor Moss requested to abstain from voting on this issue. Upon roll call vote, the motion carried unanimously, with Mayor Moss abstaining.

COUNCILLOR'S BILL NO. 77 RE COORS FIELD SALES TAX REFUND

Councillor Hicks moved, seconded by McNally to pass Councillor's Bill No. 77 on second reading authorizing the supplemental appropriation of the COORS Field sales tax rebate in the amount of \$457,448 to the General Capital Improvement fund reducing the previously authorized sales tax refund by like amount and reappropriating the funds resulting from said reductions to the General fund as follows: Capital Equipment Vehicle replacement for \$453,448; refurbishment of the Fire Equipment for \$3,000; and the Emergency Response lockboxes for \$1,000. Upon roll call vote, the motion carried with a dissenting vote from Atchison.

CITIZEN PRESENTATIONS

Jon Giezentanner, 10551 West 105<sup>th</sup> Avenue, addressed Council on any upcoming public meetings regarding the new middle school to be built near Standley Lake High School.

ADJOURNMENT:

The meeting was adjourned at 8:55 P.M.

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
January 7, 2002

**SUBJECT:** Proclamation for Mary Harlow

**Prepared By** Ron Hellbusch, Director Public Works and Utilities

**Summary Statement:**

- Mary Harlow has been employed by the City of Westminster for 11 years and served as the City's Rocky Flats Coordinator for 5 years.
- Mary has thoroughly and professionally represented the City of Westminster's position on Rocky Flats issues.
- Mary has gained the credibility and respect of local, State and Federal government agencies and leaders in her role as Westminster's Rocky Flats Coordinator.
- Mary has recently retired from the City of Westminster.

**Expenditure Required:** None

**Source of Funds:** Not Applicable

**Recommended City Council Action:**

Present a proclamation to Mary Harlow, who has recently retired as Rocky Flats Coordinator for the City of Westminster.



**SUBJECT:**

Proclamation for Mary Harlow

Page 2

**Policy Issue(s):**

There are no policy issues with this action

**Alternative(s):**

The Mayor and City Council could opt not to present this proclamation.

**Background Information:**

Mary (Mickey) Harlow has been an effective advocate for Westminster's desire to see the Rocky Flats Environmental Technology Site cleaned up in a safe and timely manner. Ms. Harlow has been successful in her work by gaining a unique respect and credibility of her colleagues, elected and appointed local and national leaders.

Mary has been a model Rocky Flats Coordinator by her thoroughness and personal commitment and passion in her personal skills and in developing coalitions that have resulted in a cleanup plan and schedule that assures protection of Westminster's environment and water and air. Ms. Harlow has served as Vice Chair of the Rocky Flats Citizens Advisory Committee, Co-chair of the Soil Action Level Review Oversight Panel, Chair of the 1999 Regional Energy Communities Alliance (ECA) regional conference, member of the Stewardship Working Group, Rocky Flats Cleanup Agreement and Focus Group, and member of the ECA, and alternate board member of the Rocky Flats Coalition of Local Governments. Mary has represented the concerns and provided the initiative on behalf of all Standley Lake cities to protect the cities' water, air, and community environment.

Mary has succeeded as a team worker, leader and consensus builder in her role as Rocky Flats Coordinator, effectively representing the City of Westminster for five years.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

WHEREAS, Mary Harlow retired from the City of Westminster on January 2, 2002 after 5 years as the Rocky Flats Coordinator and a combined total of 11 years as a City employee; and

WHEREAS, Mary Harlow's positive attitude, work ethic, commitment, and dedication over the years, have gained her the respect and admiration of City employees, citizens of Westminster, government leaders and her colleagues in the Rocky Flats community; and

WHEREAS, Mary Harlow will be remembered for her effectiveness and commitment to the safe and timely cleanup of the Rocky Flats Environmental Technology Site; and

WHEREAS, Mary has been consistently thorough and professional in her representation of the City of Westminster's positions and priorities; and

NOW, THEREFORE, I, Ed Moss, Mayor of the City of Westminster, Colorado, on behalf of the entire City Council and Staff, do hereby recognize

MARY HARLOW

for her dedication, hard work and commitment to the City of Westminster and the Rocky Flats community, and wish her good luck in all her future endeavors.

Signed this 7<sup>th</sup> day of January, 2002

---

Ed Moss, Mayor



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
January 7, 2001

**SUBJECT:** Recognition of Former Transportation Commission Members

**Prepared by:** Michele Kelley, City Clerk

**Summary Statement:**

The City Council is requested to present Certificates of Appreciation in recognition of time dedicated to the City by several members of the Transportation Commission, who have recently resigned.

Several weeks ago, Bob June and Dottie Urban, who have both served on the Transportation Commission indicated that they did not wish to be reappointed when their term expired on December 31, 2001.

A certificate of appreciation has been prepared for Bob June on behalf of the Mayor and Council in recognition of his 20 years of service on the Transportation Commission.

A certificate of appreciation has been prepared for to Dottie Urban in recognition of her 13 years of service on the Transportation Commission.

**Expenditure Required:** None

**Source of Funds:** N/A

**Recommended City Council Action:**

Present certificates of appreciation to Bob June and Dottie Urban in recognition of their dedicated service serving on the Transportation Commission.

**Policy Issue(s):**

Does the City Council wish to continue this method for recognizing Board and Commission members who resign from office?

**Alternative(s):**

Council could decide to use some other means to recognize these individuals.

**Background Information:**

Bob June was appointed to the Transportation Commission when the Commission was created in February, 1982 and has served continuously since that time, having served as Chairperson from 1982 through 1998. His term of office expired on December 31, 2001 and he did not wish to be reappointed.

Dottie Urban was appointed to the Transportation Commission on December 12, 1988 and has served continuously since that time. Her term of office expired on December 31, 2001 and she did not wish to be reappointed.

Respectfully submitted,

J. Brent McFall  
City Manager



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
January 7, 2002

**SUBJECT:** Proclamation re Jefferson County Library 50<sup>th</sup> Anniversary

**Prepared By** Michele Kelley, City Clerk

**Summary Statement:**

The Jefferson County Public Library was organized and funded in the amount of \$10,000 by the Jefferson County Board of Commissioners in 1952. Prior to this time, Jefferson County residents received library services through several small municipal libraries supported by cities, women's clubs and a Community Chest.

On Saturday, January 12, 2002, Jefferson County Library will be celebrating 50 years, with a special 50<sup>th</sup> Anniversary kickoff ceremony beginning at 2 P.M. at the Lakewood Library, located at 10200 West 20<sup>th</sup> Avenue.

A proclamation has been prepared for the Mayor to present to Jefferson County Library in recognition of their 50 years of service to Jefferson County residents.

Bill Knot, Jefferson County Librarian will be present at Monday night's meeting to accept this proclamation.

**Expenditure Required:** None

**Source of Funds:** N/A

**Recommended City Council Action:**

Mayor to present proclamation to Bill Knot in recognition of the Jefferson County Library 50th anniversary.

**SUBJECT:** Proclamation re Jefferson County Library 50<sup>th</sup> Anniversary  
Page 2

**Policy Issue(s):**

There are no policy issues concerning this proclamation.

**Alternative(s):**

Council could decide not to present this proclamation at this time.

**Background Information:**

Jefferson County Library Public Information Coordinator has requested City Council recognition of the 50<sup>th</sup> Anniversary of the Jefferson County Library System.

Since 1952 many significant events have evolved as part of the Jefferson County Library System. Some of these events include:

- 1963 First bookmobile purchased
- 1966 Book catalog fully automated and card catalog discontinued
- 1981 Jefferson County Library was the first public library in the state and one of the first in the nation to offer on line public catalog for patron use.
- 1991 Standley Lake Library opens at 8485 Kipling Street
- 1999 Jefferson County Public Library is a leader in creating the Colorado PLUS and Prospector interlibrary loan system, as well as the Colorado shared library card project.
- 2001 Jefferson County Public Library has grown to include seven full-service facilities and four small extension facilities in key locations across 780 square miles, and a bookmobile. The library is also now one of the 25 most technologically progressive library systems in the nation.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

WHEREAS, The Jefferson County Public Library will be celebrating their 50<sup>th</sup> anniversary on January 12, 2002; and

WHEREAS, The Jefferson County Public Library staff, supporters, Board of Trustees and the Commissioners of Jefferson County are to be congratulated on 50 years of outstanding service; and

WHEREAS, The Jefferson County Public Library has been a steady and true advocate for freedom through knowledge for the citizens of Westminster and all of Jefferson County; and

WHEREAS, The Jefferson County Public Library recognizes the ongoing significance of our public library as central to the quality of life and education of families and their children; and the equality of opportunity and access for the entire community that the Jefferson County Public Library stands for; and

WHEREAS, The Jefferson County Public Library has been an essential partner to the City of Westminster, especially noting the years of service from the Standley Lake Library; and

NOW, Therefore, I, Ed Moss, Mayor of the City of Westminster, Colorado, on behalf of the entire City Council and Staff do hereby proclaim Saturday, January 12, 2002 as

**JEFFERSON COUNTY PUBLIC LIBRARY DAY**

in the City of Westminster offering our best wishes as the Jefferson County Public Library celebrates its 50<sup>th</sup> anniversary.

Signed this 7<sup>th</sup> day of January, 2002

---

Ed Moss, Mayor



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
January 7, 2002

**SUBJECT:** Special Real Estate Legal Counsel

**Prepared By:** Steve Smithers, Assistant City manager  
Martin R. McCullough, City Attorney

**Summary Statement**

- Staff is recommending that the City Council authorize the City Manager to execute a legal services agreement with Ms. Barbara Banks, of Banks and Imatani, for assistance on non-routine real estate law issues that arise from time to time in the course of negotiating and preparing more complex agreements relative to such projects as the completion of the Promenade Entertainment Center, the South Westminster Revitalization Program, and further work related to the 136<sup>th</sup> Avenue area and other future retail proposals.
- Ms. Banks is an experienced attorney specializing in real estate law and is a past chairperson of the real estate section of the Colorado Bar Association. Ms. Banks has previously assisted the City, economically and effectively, with “condominiumizing” the Westin Hotel and Conference Center, and developing a mortgageable lease for the Butterfly Pavilion/IMAX project.
- When negotiating some of the more complex agreements involving private owners and their lenders, it can be very important to have someone with the appropriate knowledge to respond to representation that something is either required by or objectionable to the owners lender or is not commercially “reasonable.”
- On the immediate horizon is the negotiation with Inland Pacific relative to a Supplemental Reimbursement Agreement that has been previously reviewed by City Council in Study Session. Because this particular transaction involves a good understanding of Mr. O’Byrne’s cash management and loan agreement with the Westin Hotel lender, Deutsche Bank, City Staff is recommending that Ms. Banks be involved in the review of this particular transaction, and the drafting of appropriate language to protect the City’s interest in the net revenues stemming from this project.

**Expenditure Required:** \$15,000

**Source of Funds:** \$ 5,000 – 2001 CAO Professional Services Account

\$10,000 – 2002 Central Charges – Professional Services Account

**Recommended City Council Action:**

Authorize the City Manager to enter into an agreement with Ms. Barbara Banks for special legal counsel services in the amount of \$5,000 for work related to the negotiation and drafting of a Supplemental Reimbursement Agreement with Inland Pacific for the Westin Hotel, Conference Center, and Lakeview Pavilion, and \$10,000 for additional special legal counsel services as needed for general real estate legal advice for a 12-month period commencing January 1, 2002, through December 31, 2002.



**Policy Issue(s)**

Whether to retain special legal counsel to assist in the negotiating and drafting of various agreements involving non-routine real estate law issues.

**Alternative(s)**

City Council could elect not to retain this type of special legal counsel assistance or seek such assistance from another source.

**Background Information**

Ms. Banks is an experienced attorney specializing in real estate law. Ms. Banks is a current member and past chairperson of the Real Estate Section of the Colorado Bar Association. She has written and presented papers on a wide variety of complex real estate issues, including such matters as lender law and "mortgageable ground leases." Ms. Banks' expertise will assist City Staff in negotiating and finalizing anticipated agreements concerning the Promenade Office Building Project, South Westminster revitalization, and some of the potentially large commercial/retail projects to be further explored during 2002.

Ms. Banks has previously assisted the City in the negotiations attendant to the Butterfly Pavilion Lease, and was instrumental in completing the joint development agreement, the "condominiumizing agreement" and the conference center lease for the Westin Hotel project. Under the proposed agreement, Ms. Banks is willing to continue her current discounted rate to the City of \$200 per hour. Her regular rate is \$230 per hour.

In addition to the proposed \$10,000 for general consulting services during 2002, Staff is also requesting authorization of payment to Ms. Banks for an amount not to exceed \$5,000 for assisting in the negotiation and drafting of a Supplemental Reimbursement Agreement with the Inland Pacific Company. Staff has been meeting with Mr. Tim O'Byrne for the past several weeks concerning this Agreement, and Ms. Banks has been providing assistance without the benefit of a legal services contract, with the understanding that such a contract would be subject to approval by City Council. Completing the Supplemental Reimbursement Agreement requires a good understanding of commercial lending practices as they might apply to future requirements concerning this Agreement and, ultimately, the construction of the Promenade Office Development. Much of Ms. Banks' previous experience has been in representing large commercial lenders, both locally and nationally.

The City Charter requires City Council approval of all outside legal counsel agreements. City Council previously approved a similar arrangement for specialized legal consulting with Mr. Dee Wisor of Sherman & Howard for public finance and tax law issues. Often, only relatively brief consultations are required, and these type of arrangements afford the opportunity to obtain the necessary advice without holding up progress on the negotiations and structuring of the overall transaction.

Respectfully submitted,

J. Brent McFall  
City Manager



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
January 7, 2001

**SUBJECT:** Financial Report for November 2001

**Prepared By:** Mary Ann Parrot, Finance Director

**Summary Statement**

City Council is requested to review and accept the attached monthly financial statement. As in past years, this report is delayed to January to accommodate the holiday schedule of City Council meetings.

The Staff will request approval of the December Monthly Financial Report at the January 22<sup>nd</sup> City Council Meeting. This will bring the schedule back to a routine report for the second City Council meeting of each month.

The November Shopping Center Report is also attached to this monthly financial report.

Key features of the monthly financial report for October are as follows:

- At the end of October, 11 of 12 months or 91.7% of the year has passed. Pro-rated revenues will reflect actual historical experience and in many cases are greater than or less than the 91.7%; expenditures are pro-rated at 91.7% reflecting even flows, except where noted due to debt service payments which are due December 1.
- All funds, except for the Legacy and Heritage Golf Courses, currently stand at more than 100% of their respective revenues when using pro-rated revenues for this time of year.
- With regard to the golf course Enterprise, the weather during the fall has been favorable and the improved revenues in the golf course enterprise reflect this. Pro-rated revenues for Legacy are 94% of budget; pro-rated revenues for Heritage are 87% of pro-rated budget. However, Staff is still anticipating a shortfall for the year and is anticipating that a subsidy will be needed to keep the financial statements for the enterprise from showing a deficit this year. However, Staff is also anticipating the subsidy will be less than the deficit of \$279,000 in net income for Year 2000. Staff will apprise City Council of its findings and recommendations when year-end figures are available.
- All funds currently stand at less than 100% of their respective expenditures when using pro-rated expenditures for this time of year.
- The net position of all funds is positive. This is titled "Revenues Over (Under) Expenditures" on each page.

**Expenditure Required:** None required

**Source of Funds:** None required

**Recommended City Council Action:**

Accept the Financial Report for November as presented.

## **Policy Issue**

A monthly review of the City's financial position is the standard City Council practice; the City Charter requires the City Manager to report to City Council on a quarterly basis.

## **Alternative**

Conduct a quarterly review. This is not recommended, as the City's budget and financial position are large and complex, warranting a monthly review by the City Council.

## **Background Information**

This section is broken down into a discussion of highlights of each fund presented.

For revenues, a positive indicator is a pro-rated budget percentage at or above 100%. For expenditures, a positive indicator is a pro-rated budget percentage that is below 100%. The term "prorated," when used with revenues and expenditures, in this report, refers to the expected revenues collected or expenditures incurred by a certain date in time based on historical trends.

### General Fund

This fund reflects the results of the City's operating departments: Police, Fire, Public Works (Streets, etc.), Parks Recreation and Libraries, Community Development, and the internal service functions such as City Manager, City Attorney, Finance, General Services and Information Technology.

At the end of November, the General Fund is in a positive position regarding both revenues and expenditures:

- Over pro-rated budget in revenues by \$3,456,807 (105% of pro-rated budget). Most of this difference is due to the accounting recognition of master lease payments for equipment (\$1,003,943), revenues from Hyland Hills for Ice Centre COP payments (\$728,251) and increases in revenues across the other categories.
- The budgets for two revenue categories were increased by City Council action during the month: Intergovernmental Revenues and Recreation Services.
- Under pro-rated budget in expenditures by \$6.5 million (90% of pro-rated budget). Because of year-end expenditures, Staff expects this variance to be reduced in the December report.

### Water, Wastewater and Storm Water Drainage Funds (The Utility Enterprise)

This fund reflects the operating results of the City's water, wastewater and storm water systems. It is important to note that net operating revenues are used to fund capital expenses. At the end of November, the Enterprise is in a positive position.

- Over pro-rated budgeted revenues by a combined \$7.5 million:
  - Water revenues over pro-rated budget \$6.0 million (121% of pro-rated budget), mostly due to increases in revenues for rates and tap fees.
  - Wastewater revenues over pro-rated budget by \$1.482 million (115% of budget), mostly due to increases in revenues for rates and tap fees.
  - Storm Drainage over pro-rated budget by \$313,212.
- Under pro-rated budget in expenditures by a combined \$6.6 million:
  - Water under pro-rated budget by \$4.8 million (76% of pro-rated budget).
  - Wastewater under pro-rated budget by \$1.8 million (74% of pro-rated budget).
  - Storm Drainage under pro-rated budget by \$34,233 (25% of pro-rated budget).

Sales and Use Tax Funds (Sales Tax Fund and Open Space Fund)

These funds are the repositories for the 3.25% City Sales & Use Tax for the City. The Sales Tax Fund provides monies for the General Fund, the Capital Projects Fund and the Debt Service Fund. The Open Space Funds are pledged to meet debt service on the POST bonds and to buy open space and make park improvements on a pay-as-you-go basis. At the end of November, these funds were also in a positive position.

- Sales Tax Fund - Over pro-rated budget in revenues by \$1.6 million (103.27% of pro-rated budget).
- Sales Tax Fund - Exactly even with pro-rated expenditures of \$49.3 million, per the transfers of funds on a month-by-month basis into the three funds as described.
- A note is due here regarding the Over (Under) Budget, because it is not intuitive – the pro-rated budget expectation is for a negative \$636 thousand net income, yet year to date, the figures show a positive \$957 thousand million actual net income. The spread is therefore \$1.6 million.
- Open Space Tax Fund – Over pro-rated budget in revenues by \$901,033 (112% of pro-rated budget).
- Open Space Tax Fund – Under pro-rated budget in expenditures by \$646,100 (90% of pro-rated budget).

Golf Course Funds (Legacy and Heritage- the Golf Course Enterprise)

These funds reflect the operations of the City's two municipal golf courses. The courses have experienced improvement in revenues during the fall due primarily to good weather and increased rounds of golf. Staff will have a more complete picture of the Enterprise financial position when the month-end report is available in December when the enterprise has its full year of operations to review.

- Legacy - Under pro-rated budget in revenues by \$101,377 (94% of pro-rated budget)
- Legacy - Under pro-rated budget in expenses by \$48,204 (96% of pro-rated budget); this variance excludes the impact of the December 1 debt service payment. The debt service for Legacy was made December 1 and will be reflected in the December financial statement.
- Heritage -Under pro-rated budget in revenues by \$210,339 (87% of pro-rated budget). Heritage's revenues have decreased compared to October, despite the better weather; although some of the lost revenue in the Spring has been made up, this course still faces a negative budget variance as mentioned in the summary.
- Heritage – Under pro-rated budget in expenditures by \$78,114 (94% of pro-rated budget); this variance excludes the impact of the December 1 debt service payment. The debt service for the Heritage was also made December 1 and will be reflected in the December financial statement.

Staff will be in attendance at the January 7th City Council Meeting to address any questions.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
January 7, 2002

**SUBJECT:** Ratification of Purchase of Excess Workers' Compensation Insurance

**Prepared By:** Martee Erichson, Risk Management Officer

**Summary Statement**

- City Council action is requested to ratify the annual expenditure for the 2002 premium for excess workers' compensation insurance effective January 1, 2002.
- The City annually purchases insurance to cover catastrophic losses resulting from on-the-job injuries to employees, that would exceed the City's self insured amount. This insurance is purchased using a competitive bid process through Marsh USA Inc who purchased the coverage for the City from Safety National Casualty Corporation. The accepted quote from Marsh for 2002 for excess workers' compensation coverage is \$63,289.
- The quote for 2002 represents an increase in premium of \$39,238 (162%) from 2001.
- The increase in premium is due to the fact that the premium had been locked in by a contract with the excess carrier for the previous three year period and the payroll figure previously used by the excess carrier understated the City's actual payroll. In addition, there have been significant increases in the excess insurance market during the past two years. Staff has calculated that more than half of the premium increase results from the increases in the City's reported budgeted payroll over the past three years, while the balance of the increase is due to changes in the insurance market.

**Expenditure Required:** \$ 63,289

**Source of Funds:** Workers' Compensation Self Insurance Fund.

**Recommended City Council Action**

Ratify the purchase of Workers' Compensation Excess insurance for \$63,289 from Safety National Casualty Corporation and charge this expense to the 2002 Workers' Compensation Self Insurance Fund.

**Policy Issue**

Should the City continue to self-insure its workers' compensation coverage, purchasing excess insurance to cover any catastrophic losses?

**Alternative(s)**

There are no alternatives at this time.

**Background Information**

The City currently self-insures the first \$300,000 of each workers' compensation claim. A self-insurance program allows for more control over claims handling and payment and reaps immediate rewards from our loss control and safety programs. This type of program also allows the City to avoid some of the dramatic changes currently affecting the insurance industry.

The Risk Management Staff completed and submitted the application for excess workers' compensation coverage to Marsh USA Inc. in October 2001. Marsh USA Inc., acting as insurance broker on behalf of the City, sought proposals on the open insurance market for this coverage. They received five responses and submitted their renewal proposal to the City's Risk Management Officer on December 19, 2001. The delayed proposal was due to the general condition of the marketplace and the City's insurance broker's desire to get the best quote for the City's program. The City's current policy expired on January 1, 2001. Because of this delay and expiration date, Risk Management had to bind coverage prior to seeking City Council's approval.

The quote responses were as follows:

<b>CARRIER</b>	<b>PREMIUM</b>	<b>LIMITS</b>	<b>RETENTION</b>	<b>NOTES</b>
Genesis Insurance Company	NA	\$25,000,000	NA	Declined to quote
Hartford Specialty	NA	NA	NA	
Midwest Employers Casualty Company	\$66,605	Statutory	\$350,000	
National Union Fire Insurance Company	NA	\$10,000,000	\$500,000	
Safety National Casualty Corporation	\$63,289	Statutory	\$350,000	

The Risk Management Staff requires this policy to have a "statutory" limit that would cover payments for any disaster, no matter how great and will not accept a dollar limit to be imposed. The quotes from Genesis and National Union were unacceptable due to the dollar limits they would place on the coverage.

Safety National Casualty provided the City with the option of increasing the self-insured retention limit from \$300,000 to \$350,000. The premium savings outweighs the risk of retaining an increase of \$50,000 in claims, especially since the City has not had a workers' compensation claim reach the excess levels of coverage for the past nine years. The premium for continuing coverage with \$300,000 in retention would have been \$81,873 – an increase in premium of 240% from 2001.

Significant changes have occurred in the insurance marketplace over the past two years. Due to underwriting losses and decreased investment income, insurance carriers were operating at a loss.

Underwriters had been requesting 10-25% annual premium increases on accounts with favorable loss experience, with even higher increases for those with larger losses and for those entities that provide fire and police services. These trends continued into 2001 and were compounded by a few major losses resulting from earthquakes and floods and most recently, the attack on the World Trade Center. The losses of the insurance companies, especially in the reinsurance community, are now being passed on to the insureds.

Respectfully submitted,

J. Brent McFall  
City Manager



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
January 7, 2002

**SUBJECT:** Golf Course Food and Beverage Concessionaire Agreement

**Prepared By:** Ken Watson, Recreation and Golf Facilities Manager

**Summary Statement**

- On December 17, 2001, Parks, Recreation and Libraries Staff met with City Council and reviewed a Staff recommendation to move forward with selecting Evergreen Alliance Golf Limited, L.P. (EAGL) as the food and beverage concessionaire at Legacy Ridge Golf Course and the Heritage Golf Course.
- After a thorough Request for Proposal process, the interview team recommended that EAGL be selected as the City golf course food and beverage concessionaire.
- EAGL currently operates 38 golf course food and beverage concessions in several states. Fourteen of those concessions are on municipal golf courses. Locally, they manage the Broadlands snack concession in Broomfield, and of late Mira Vista Golf Course in Aurora. Other notable facilities include the Dallas Cowboy's Golf Club, Irving, Texas, and Stanford University Golf Course, Palo Alto, California.
- EAGL will pay the City a base rent of \$3,000 per month for each golf course plus an annual contingent fee of one percent of annual gross revenues in excess of \$150,000 for each golf course. If combined, gross revenues equal \$400,000, the City would then receive a fee equal to one percent for every \$100,000. EAGL has also proposed annual increases to the rent payment based upon the Consumer Price Index. The current operation's contract provides a rent payment of \$3,000 per month for Legacy Ridge Golf Course and \$2,500 per month for the Heritage Golf Course. Therefore, EAGL's proposed lease payment provides for enhanced revenues in comparison to the previous lease agreement.
- City Council requested Staff to provide an Agenda Memorandum with recommendations to authorize the City Manager to sign a concession agreement with EAGL. Councillor Dixon requested sample menu information and Staff has attached that information.

**Expenditure Required:** \$ 0

**Source of Funds:** N/A

**Recommended City Council Action**

Authorize the City Manager to sign a concessionaire agreement between the City of Westminster and Evergreen Alliance Golf Limited, L.P., for a term of five (5) years.



**Policy Issue(s)**

Does City Council wish to enter into a golf course restaurant concession agreement with a private restaurant contractor, which specializes in golf course food and beverage operations?

**Alternative(s)**

- City Council could reject Staff's recommendation to select EAGL to operate the golf course concessions and choose one of the other RFP submittals.
- City Council could reject all of the proposals and instruct City Staff to re-advertise the golf course concession package.
- City Council could reject all of the proposals and instruct Staff to negotiate a concession lease with a sole source vendor of Council's choosing.

**Background Information**

The City's golf course concession leases with Mr. Bert Gehorsam will expire at the end of January 2002. As a result, City Staff decided to open the golf course restaurant concession leases to competitive proposals. Thirteen RFP packets were given to interested vendors. Four (4) RFP's were formally received. The following groups or individuals responded to the RFP's.

- Mr. Bert Gehorsam – Legacy Ridge Golf Course Only
- Mr. Bob Pfaff (Current manager of Legacy Grill)
- Evergreen Alliance Golf Limited, L.P., Irving Texas – Both Golf Courses
- Mike Jones (Affiliated with C.B. Potts) – Both Golf Courses

EAGL manages large and small food and beverage operations, with the closest managed golf course being The Broadlands in Broomfield. EAGL considers The Broadlands food and beverage operation to be fairly small, consisting of a basic "front grill" with virtually self-service offerings from the bar area. However, Staff has contacted several food and beverage facilities managed by EAGL and those references have rated EAGL very high in their ability to provide excellent guest service and offer quality "golf food" that is priced according to the value of the product and location. EAGL management has stated their goal is to operate the restaurants for their primary target market – Legacy Ridge and the Heritage golfers. They have also stated they will actively market their restaurants to local office parks, but have no intentions to create themed "destination" type food and beverage establishments that would then rely on high use by non-golfing customers. This is a goal echoed by the Parks, Recreation and Libraries Staff.

After carefully reviewing qualifications and references, the review committee unanimously recommends the Evergreen Alliance Golf group as the best qualified to operate the City's Golf Course restaurants.

At the December 17, 2001, Post Council Meeting session, City Council reviewed the qualifications of EAGL, asked Parks, Recreation and Libraries Staff some pertinent questions, and requested that Staff move forward with this Agenda Memorandum authorizing an agreement with EAGL.

Respectfully submitted,

J. Brent McFall  
City Manager

## Attachments

**CITY OF WESTMINSTER  
CONCESSIONAIRE AGREEMENT**

This AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 2002, by and between the **CITY OF WESTMINSTER**, a municipal corporation of the State of Colorado (“City”) and Evergreen Alliance Golf Limited, L.P., a \_\_\_\_\_ corporation (“Concessionaire”).

WHEREAS, the City desires to make available food and beverage services for the use and convenience of golfers and customers of the City’s Legacy Ridge Golf Course located at 10801 Legacy Ridge Parkway, and the Heritage Golf Course, located at 10555 Westmoor Drive; and

WHEREAS, the Concessionaire is willing and able to provide such services pursuant to the terms and conditions of this Agreement, including any attachments, appendices, exhibits and addendums that may be incorporated into and make a part thereof.

NOW, THEREFORE, the City and Concessionaire agree as follows:

In consideration of the payments hereinafter provided for, the keeping and performance of the covenants and agreements by the Concessionaire hereinafter set forth, the City hereby grants to said Concessionaire the right to operate a food and beverage concession at the Legacy Ridge Golf Course and the Heritage Golf Course located in the Counties of Adams and Jefferson, City of Westminster, State of Colorado, which is shown in Exhibit “A” and Exhibit “B” of this Agreement. The Concessionaire has reviewed the plans, drawings, and other materials relating to the Premises and Concession Facilities, and has had access to and has negotiated with various City officials, and accepts the terms and conditions of this Agreement.

1. Definitions.

The following terms, as used in this Agreement, are defined as follows:

- (a) “City” – City of Westminster, Colorado
- (b) “Concessionaire” – The entity to which the City has granted the right to operate the Concession on, at or from the Premises and Concession Facilities, subject to the terms and conditions herein. This term also includes the agents, employees, or assignees of said Concessionaire.
- (c) “Manager” – The Recreation and Golf Facilities Manager of the Department of Parks, Recreation and Libraries of the City of Westminster, Colorado or designee.
- (d) “Concession” – The right granted to the Concessionaire to sell and serve food and beverages to general public and patrons of the Golf Course or Clubhouse on, at or from the Premises or Concession Facilities.
- (e) “Concession Facilities” – The facilities located in the area set out in Exhibits “A” and “B” of this Agreement, which include the deck areas, tent sites for catering, mobile service carts, and other on-course service sites for food and beverage service at the Golf Course.

(f) “Director” – Director of the Department of Parks, Recreation and Libraries or Designee.

(g) “Golf Course” – The area set out in Exhibits “A” and “B”, which are designated as the Golf Course.

(h) “Premises” – The restaurant, grill, and bar that are located in the Clubhouse area designated in Exhibits “A” and “B.”

## 2. PURPOSE.

(a) It is the intent of this Agreement to provide for a complete concession operation upon the Premises and Concession Facilities covered by this Agreement, with only such exceptions and limitations as may be specifically noted herein.

(b) In interpreting this Agreement, words describing materials or work that have a well-known technical or trade meaning, unless otherwise specifically defined, shall be construed in accordance with such well-known meaning recognized by the trade.

## 3. TERM OF AGREEMENT: RENEWAL.

(a) The term of this Agreement shall be from February 1, 2002, through, January 31, 2007, unless renewed for one additional five (5) year term or unless terminated earlier as provided for in Section 23 hereof.

(b) The City shall give written notice to Concessionaire on or before September 30, 2007, of its intent to renew this Agreement for an additional five (5) years or its intent to terminate. The Concessionaire shall give written notice to the City of its desire to renew or terminate on or before September 30, 2007. Termination will occur on January 31, 2007. or the renewal term shall begin on February 1, 2007, provided that the parties reach agreement as provided below.

(c) The five (5) year renewal shall be subject to the discretion of the City and the City’s determination of satisfactory performance by the Concessionaire of the terms and conditions of this Agreement, as well as mutual agreement between the parties regarding the monthly Base Concession Fee and the percentage of utilities to be paid under Paragraph 11 of this Agreement. If the parties are unable to mutually agree upon the monthly Base Concession Fee and the percentage of utilities to be paid under paragraph 11 of this Agreement within thirty (30) days after notices of intent, then the City shall have the right to immediately request bids for a new Concessionaire at the Premises.

## 4. SCOPE OF WORK.

(a) The scope of work to be performed under this Agreement is the furnishing of a top quality Concession operation for the sale and service of food and beverages to the general public and patrons of the Premises and Concession Facilities at such prices and under such standards of operation as will assure prompt, courteous, and convenient services to the general public and patrons. The Concessionaire shall comply with all guidelines and standards that are contained in Exhibit “C,” attached hereto and incorporated herein.

(b) The privilege granted by this Agreement shall be an exclusive right to provide for the sale of all food, beverages, and catering services on the Premises and the Concession

Facilities. The City reserves the right to conduct or operate other concessions upon the Premises and Concession Facilities, which do not compete with the Concessionaire. Any rights not specifically granted to the Concessionaire herein are retained by the City.

(c) The Concessionaire will:

(i) Provide all food and beverage services available on the Premises and the Concession Facilities;

(ii) Provide all food and beverage banquet, catering, and meeting services on the Premises and Concession Facilities;

(iii) Provide all mobile cart services for food and beverages;

(iv) Provide all food and food stuff vending machine services;

(v) Provide all temporary food and beverage facilities as agreed to by the Manager and the Concessionaire;

(vi) Employ, train, staff, and manage all personnel required to properly operate and maintain the Concession;

(vii) Provide repair and maintenance services for City-owned equipment as set out in Exhibit "C;"

(viii) Obtain all licenses, permits, and certificates required to operate the Concession, including, but not limited to, a Hotel and Restaurant class liquor license with Optional Premises license;

(ix) Operate the Concession in a manner fully supportive, and in compliance with, the quality standards and guidelines set out in Exhibit "C" to this Agreement;

(x) Operate the Concession Facilities as public facilities in a non-discriminatory manner at all times;

(xi) Promote and market the Concession to the general public; and

Concessionaire shall not place or permit any sign, advertisement, display, notice, or other lettering to be exhibited or fixed to any part of the Premises or Concession Facilities without the City's prior written approval.

(xii) Provide any and all equipment in addition to that provided by the City, which is necessary to provide the required level of services.

## 5. USE OF PREMISES.

(a) Concessionaire shall have the right to possession of the Premises and Concession Facilities for the purpose of the sale and service of food and beverages, including alcoholic beverages, subject to the standards and guidelines set out in Exhibit "C" of this Agreement. Use of the Premises and Concession Facilities by Concessionaire for the sale and service of alcohol beverages shall be in compliance with the Colorado Liquor Code. Section 12-47-101, et seq., C.R.S., and Title VI, Chapter 9 of the Westminster Municipal Code. Concessionaire shall have

control of and responsibility for the Premises and Concession Facilities with respect to the sale and service of all alcoholic beverages. Concessionaire shall not use or permit the Premises or Concession Facilities to be used for any purpose that is prohibited by any law or regulation of the State of Colorado or the City of Westminster. In the event the rights granted Concessionaire under this Agreement are insufficient to obtain a liquor license for the sale of alcoholic beverages at the Premises and the Concession Facilities, the City will grant such additional rights to Concessionaire as are required to obtain approval of the liquor license.

(b) Entertainment of any nature shall be subject to approval of the Manager, which approval shall not be unreasonably withheld. If the Manager disapproves any entertainment, the Concessionaire shall terminate said entertainment immediately.

(c) City hereby grants Concessionaire a non-exclusive and limited license to use of the City's logos, copyrights, trademarks, and trade names existing for the Premises, Concession Facilities (Legacy Ridge Golf Course or the Heritage at Westmoor Golf Course), on t-shirts and uniforms worn by employees of Concessionaire, and on Concession menus, napkins, matches, beverage cart signage, glassware, and any other reasonable usage in connection with operation of the Concessionaire. The use of such logos, copyrights, trademarks and trade names will be in proper manner including use of any design or symbol as may be required by the City. The City retains the right to review and approve any and all uses of City logos, copyrights, trademarks, and trade names used by Concessionaire in connection with the operation of the Concession. Concessionaire warrants that any use of logos, copyrights and trademarks, and used in connection with operation of the Concession will be done without violation of any rights therein. When possible and appropriate, the City will include the restaurant names in advertising for the Golf Courses.

(d) Concessionaire shall maintain all signs or advertisements approved by the City in good and attractive condition at the Concessionaire's expense.

## 6. RESTRICTIONS ON USE OF PREMISES.

(a) Concessionaire shall not:

(i) Permit any unlawful practice to be carried on or committed on the Premises or Concession Facilities;

(ii) Make any use or allow the Premises or Concession Facilities to be used in any manner or for any purpose that might invalidate or increase the rate of insurance on any policy maintained by the City; including storage or use or permitting to be kept or used on the Premises or the Concession Facilities any inflammable fluids, toxic materials, or substances of any nature reasonably deemed dangerous by the City or the City's insurance carriers without obtaining prior written consent of the City, except for small quantities of cleaning products incidental to their permitted uses described in this Agreement;

(iii) Use the Premises or Concession Facilities for any purpose that creates a nuisance or injures the reputation of the Premises or the City;

(iv) Permit any odors to emanate from the Premises or Concession Facilities in violation of any local, state, or federal law;

(v) Use any portion of the Premises or Concession Facilities for storage or other purposes except as is necessary and required with its use specified in this Agreement;

(vi) Permit its employees to park anywhere upon the Premises except in employee parking, as designated by the Manager and shown in Exhibits “A” and “B” to this Agreement; provided, however, designated employee parking may be modified from time to time by the Manager upon prior notice to Concessionaire;

(vii) Permit tobacco products to be used by any person in, on, or at the Premises or Concession Facilities, which locations have been designated in whole as “smoke free” by the City; provided, however, that the City will specify a limited area at the Premises that allows smoking by Premises patrons; or

(viii) Conduct, or allow to be conducted, gambling on site.

(ix) Concessionaire shall not place or permit any sign, advertisement, display, notice, or other lettering to be exhibited or fixed to any part of the Premises or Concession Facilities without the City’s prior written approval

## 7. IMPROVEMENTS.

The City retains the right to modify or alter the improvements of the Premises and Concession Facilities at any time and in any manner; provided, however, such modifications or alterations shall only occur during “off season” (November 1 through March 31) periods with the exception of any emergency work deemed necessary by the City. Concessionaire shall make no improvements or alterations to the Premises or Concession Facilities without prior written approval by the City; PROVIDED HOWEVER, THAT CONCESSIONAIRE MAY MAKE CORRECTIONS NECESSARY TO PREVENT IMMINENT INJURY TO PERSONS OR PROPERTY.

## 8. MAINTENANCE.

All maintenance and repairs to the Premises and Concession Facilities including plumbing, water lines, and sewer lines shall be the responsibility of the City; provided, however, that any maintenance and repairs, regardless of cost, necessitated by the negligence or intentional acts of the Concessionaire shall be the sole responsibility of the Concessionaire. As part of the City’s preventative maintenance program, the City may require an annual “closure for repairs” in order to rejuvenate the Premises and Concession Facilities; provided, however, such shall occur during “off-season” periods with the exception of emergency work deemed necessary by the City. Therefore, during the term of this Agreement, and all renewal options thereto, the Concessionaire agrees that, if requested in writing by the City 45 days in advance of the scheduled closing, the Premises and Concession Facilities shall be closed for a reasonable period of time during “off-season” periods for the City to conduct all necessary work. The City will adjust Concessionaire’s fees due hereunder for lost revenue arising from closures necessitated by such work

## 9. EQUIPMENT.

(a) The Concessionaire shall furnish a smallwares package, the minimum requirement of which is detailed in Exhibit “D” attached hereto and incorporated herein by this reference. Concessionaire shall be responsible for replacing and keeping in service all items in the smallwares package. All such items shall remain the property of Concessionaire at the termination of this Agreement.

(b) The City will furnish equipment, furniture, fixtures, and personal property, as set out in Exhibit "E" attached hereto and incorporated herein by this reference, which items shall remain the property of the City. Concessionaire shall be responsible for maintenance and repair of all City-owned equipment, furniture, fixtures, and personal property set out in Exhibit "E" during the term of this Agreement, which items shall be kept in proper repair and working order, and be in good and serviceable condition at the termination of this Agreement, except for normal wear and tear. The City shall be responsible for replacement of its equipment, furniture, fixtures, and personal property when the City deems such replacement is necessary; provided however, if replacement is necessary due to negligence of Concessionaire, Concessionaire shall bear the cost of replacement.

#### 10. UTILITIES.

(a) The City shall provide for the delivery of water, sewer, telephone, electricity, and gas to the Premises and Concession Facilities for the operation of the Concession. Concessionaire is responsible for payment of all such services as set forth below.

(b) Concessionaire shall pay to the City thirty percent (30%) of the monthly utility bill for electricity, water, and sewer for the Premises, and sixty percent (60%) of the utility bill for gas, payable on or before the 30<sup>th</sup> of each month for the preceding month. Within ten (10) days of a written request by Concessionaire, the City will provide Concessionaire a written explanation of the City's calculation of utility bills and any relevant back-up documentation.

(c) Concessionaire shall pay for all telephone costs associated with the Premises, based on location of the phones and billing information. The City will provide billing information as above.

#### 11. OTHER OPERATIONS AND ACTIVITIES.

(a) The Concessionaire shall conduct the Concession granted to it without infringement upon the rights of others, or any interference in the operation of the Golf Course or Clubhouse in general, or any facilities adjacent thereto. It shall not engage in any business to sell any commodity upon, in, or around the Premises or Concession Facilities other than as expressly set out in this Agreement. The Concessionaire shall cooperate so as not to interfere with the holding or carrying on of any event upon the Premises or Concession Facilities, and shall not create unreasonable noise or annoyance to those participating in or attending such events.

(b) Notwithstanding Paragraph 4(c), to the extent permissible by law, the Concessionaire will allow the City to utilize refreshment "donations" from tournament sponsors for five (5) City-sponsored or co-sponsored tournaments each calendar year, i.e., Colorado Senior Open, City Championship, Westminster Rotary, and City Employee Tournament.

#### 12. HOURS OF OPERATION.

(a) The restaurant and snack bar will be open for business no less than one (1) hour before the first available tee time on the golf course, and until one (1) hour after sunset during the golf season (April 1 to October 31). Hours of business during the off-season shall be no less than 7 a.m. to 6 p.m. The Concessionaire shall provide adequate staff at all times. The Concessionaire shall offer breakfast and lunch service in the dining room and at the walk-up snack bar window. Each food service area shall serve all items listed on the approved menus. Service shall be provided every day. If Concessionaire fails to open on time, a \$25.00 penalty



for each late opening will be assessed, to be billed monthly. Ongoing problems with late openings may result in the termination of this agreement.

(b) Concessionaire's hours of operation and level of service may be adjusted by the City according to changes in the level of golf course operations.

(c) The Concessionaire will operate mobile beverage carts at the City's Golf courses. The City provides one cart at each course and the Concessionaire will be required to provide one cart at each course.

The Concessionaire will be required to operate their cart whenever the course is open for play. The Concessionaire will be required to operate two carts at the course on Fridays, Saturdays, Sundays, holidays and all tournaments with 72+ players during the peak golf season, April 1 to October 31.

Beverage car(s) will be on the course:

April 1 to October 31	8:00 a.m. to 5:00 p.m.
November 1 to March 30	9:00 a.m. to 3:00 p.m.

### 13. PERMITS AND LICENSES.

(a) The Concessionaire shall procure, supply, and post, at its own expense, in places to be designated by the City, all permits and licenses necessary for the operation of the Concession and shall pay, at its own expense, all taxes assessed or levied against its business and merchandise.

(b) The Concessionaire or its subsidiary, Coal Creek Golf Course, Inc., shall apply for a Hotel and Restaurant Liquor License, with Optional Premises within fifteen (15) business days after the date this Agreement is fully executed and shall maintain such license during the term of this Agreement. The Director will fully cooperate with Concessionaire in Concessionaire's application for such liquor license. The Concessionaire shall pay all expenses necessary to obtain the liquor license. Nothing contained in this Agreement shall be construed to guarantee that the City will approve the issuance of any license. In the event such license is denied, or in the event that such license is issued but later revoked or suspended BY THE LOCAL OR STATE LIQUOR LICENSING AUTHORITIES, such denial, suspension, or revocation may be deemed a material breach, and the City may immediately terminate this Agreement. No transfer of the license shall be made without the approval of the City and only as part of an assignment of this Agreement. Upon termination, the City may designate a transferee of the liquor license. The Concessionaire agrees to take all actions necessary to promptly transfer the existing license to the transferee.

### 14. AUTHORITY OF MANAGER

(a) The Manager shall develop and interpret the application of all standards and guidelines provided for in this Agreement and exhibits attached hereto. The Manager shall decide all questions that may arise as to the Concessionaire's fulfillment of such standards and guidelines. The Manager may revise such standards and guidelines from time to time with thirty (30) days written notice to the Concessionaire. In the event the Concessionaire disagrees with a decision of the Manager, Concessionaire shall have the right to appeal the decision to the Director, provided such appeal is in writing and filed with the Director within ten (10) days after

the Concessionaire's receipt of the Manager's written decision. The Director shall make a determination within twenty (20) days after his receipt of the appeal. The decision of the Director shall be in writing and shall be sent to each party at the addresses set out in Section 30(a) of this Agreement. The decision of the Director shall be final.

(b) The Concession prices and standards of operation must be approved by the Manager in accordance with Exhibit "C."

(c) If the service being performed by the Concessionaire does not meet the standards and guidelines set out in this Agreement, the Manager shall immediately notify the Concessionaire, and the failure shall be deemed a default.

#### 15. ACCESS AND INSPECTION.

The Director or his designee may enter the Premises and Concession Facilities at any reasonable time for the purpose of inspecting the same. Any entry onto or inspection of the Premises and Concession Facilities by the City pursuant to this section shall not constitute interference with the operations of the Concessionaire and no abatement of any payments due under this Agreement shall be allowed; provided, however, the scope and length of the inspection is reasonable.

#### 16. PAYMENTS.

(a) Monthly Base Concession Fee. The monthly base concession fee is to be negotiated by the Director and the Concessionaire each year no later than December 15 for the coming year. Review of the base concession fee will include, but not BE limited to, gross sales, expenses, and changes in the Denver-Boulder Consumer Price Index. For 2002, the Concessionaire shall pay \$3,000 per month per concession facility or a total of \$6,000 per month (hereinafter referred to as "Base Concession Fee") to the City as payment for the concession commencing on February 1, 2002.

The Base Concession Fee is due to the City prior to the first of the month for the upcoming month. The Base Concession Fee will be paid to the City without notice or demand, and without deduction or offset, at the address specified for the City in Section 30 – "Notices", or such other place as the City shall designate.

(b) Contingent Fee. In addition to the Base Concession Fee, the Concessionaire will pay an annual contingent fee equal to ONE PERCENT (1.0%) of gross revenues in excess of \$150,000 gross revenues per each concession facility.

(c) Books and Records. Concessionaire and each licensee or concessionaire of Concessionaire shall keep a permanent, accurate set of records of all gross sales derived from the conduct of the Concession, including all point-of-sale records, tapes, and printouts; sales reports and ledgers; files; computer records and disks; cash register tapes, sales slips, order records, and invoices; copies of all tax returns filed with any governmental authority that reflect in any manner sales, income, or revenue generated in connection with the Concession, as may be reasonably required in order to ascertain, document, or substantiate gross sales. All such records shall be retained for at least three (3) years after the end of the calendar year to which they relate.

(d) Late Payment. If Concessionaire fails to pay any Base Concession Fee after a five (5) day grace period, the unpaid amount will be subject to a late payment charge equal to five percent (5%) of the unpaid amount. This late payment charge will constitute liquidated

damages and will be payable to the City together with such unpaid amount. The payment of this late payment charge will not constitute a waiver by the City of any default by Concessionaire under this Agreement.

(e) Additional Concession Fees. All other amounts, liabilities, and obligations that Concessionaire assumes or agrees to pay pursuant to this Agreement, together with any payment of utilities, late payment charges, or contingent fee, shall constitute additional concession fees (hereinafter referred to as “Additional Concession Fees”). If Concessionaire fails to pay any Additional Concession Fees, the City shall have the rights, powers, and remedies provided herein or by law for nonpayment of Basic Concession Fees. Concessionaire shall pay the Additional Concession Fees upon the City’s demand, unless otherwise expressly provided herein, without offset or deduction of any nature.

(e) Accounting Controls and Procedures. The City shall have the right at any time, and from time to time, to review and approve the internal accounting controls and procedures utilized in connection with, or that are designed for, the operation of the Concession.

#### 17. SECURITY DEPOSIT.

The Concessionaire shall furnish a security deposit, as security for Concession Fees, security for the return of all City-owned buildings and equipment in good condition at the termination of the Agreement, and as security for its performance of all covenants contained herein, in the form of a cash deposit of \$5,000 per concession facility, or \$10,000, which shall be segregated by the City in an interest-bearing account; which interest shall accrue to the Concessionaire.

#### 18. OTHER PAYMENT OBLIGATIONS.

(a) The Concessionaire shall promptly pay all taxes and fees of whatever nature, applicable to the operation of the Concession, and shall maintain all licenses, municipal, state or federal, required for the conduct of business, and shall not permit any of said taxes or fees to become delinquent. The Concessionaire shall furnish to the City, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment of the social security, unemployment compensation and all taxes and fees referenced above. The Concessionaire shall pay promptly when due all bills, debts, and obligations, included, but not limited to, its portion of charges for water, sewer, gas, and electricity as set out herein, as well as all charges for telephone service, refuse collection, and all other costs and expenses related to the operation of the Concession, and shall not permit the same to become delinquent or suffer any lien, mortgage, judgment, execution, or adjudication in bankruptcy which will in any way impair the rights of the City under this Agreement. All such costs and expenses of the Concessionaire are to be borne by the Concessionaire.

(b) The City shall promptly pay all bills, debts, obligations, and fees of whatever nature applicable to its operation of the Golf Course, in general, including but not limited to, payment of its portion of the utility service provided to Concessionaire hereunder and shall not permit the same to become delinquent and suffer any lien, mortgage, judgment, execution, or adjudication in bankruptcy which will in any way impair the rights of the Concessionaire under this Agreement. The City shall maintain all municipal, state, or federal licenses required for the conduct of the City business.

#### 19. INDEMNIFICATION.

The Concessionaire agrees to indemnify and hold harmless the City of Westminster, its officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of Concessionaire's operation of the Concession and liquor license, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of the Concessionaire, any subcontractor of the Concessionaire, any subcontractor of the Concessionaire for whom Concessionaire is liable, or any officer, director, shareholder, member, employee, representative, or agent of the Concessionaire, or which arise out of any workers' compensation claim of any employee of the Concessionaire or of any employee of any subcontractor of the Concessionaire. The Concessionaire agrees to investigate, respond to, and to provide defense for and defend against any such liability, claims or demands at the sole expense of the Concessionaire, and agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims, or demands alleged are groundless, false, or fraudulent.

20. ATTORNEYS FEES.

If any action is brought to recover any Basic Concession Fees or Additional Concession Fees, or on account of any Event of Default or other breach of this Agreement, or for the recovery of the possession of the Premises and Concession Facilities, or otherwise, the prevailing party shall be entitled to recover from the other party, as part of prevailing party's costs, reasonable attorneys' fees, the amount of which shall be fixed by the court and shall be made a part of any judgment.

21. INSURANCE.

(a) Concessionaire shall procure and continuously maintain at its own expense the minimum insurance coverages listed below, with forms and insurers acceptable to the City. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

(i) Commercial General Liability Insurance with combined single limit of \$3,000,000 per occurrence. This policy must include Contractor Liability, Products Liability, Broad Form Property Damage, and Personal Injury;

(ii) Owned, hired, and non-owned automobile liability coverage with \$600,000 limit;

(iii) Statutory workers' compensation on all employees;

(iv) All risk insurance for full insurable replacement value of City-owned equipment and personal property.

(b) The required insurance policies shall be endorsed to include the City of Westminster as an additional insured as its interests may appear under this Agreement. Every policy required above shall be primary insurance, and any insurance carried by the City, its elected officials, officers, employees, or others working on behalf of the City, or carried by or provided through any self-insurance pool of the City, shall be excess and not contributory insurance to that provided by Concessionaire. Each party to this Agreement agrees to waive subrogation on respective property insurance.

(c) The Certificate of Insurance provided to the City shall be completed by Concessionaire's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the City prior to the commencement of the Agreement. The certificate shall identify this Agreement and shall provide the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the City. Certificates of insurance shall be marked to identify this Agreement and shall be sent to:

Recreation and Golf Facilities Manager  
City of Westminster  
4800 W. 92<sup>nd</sup> Avenue  
Westminster, Colorado 80031

A certified copy of any policy shall be provided to the City of Westminster upon its request.

(d) The parties hereto understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitation (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101, *et. seq.*, C.R.S., as from time to time amended, or otherwise available to the City of Westminster, its elected officials, officers, or employees.

## 22. NON-DISCRIMINATION.

(a) The Concessionaire will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessionaire agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government setting forth the provisions of the Equal Opportunity Laws.

(b) Concessionaire shall not discriminate against any customer, guest, golf patron, employee or visitor because of race, color, religion, age, sex, disability, or national origin and shall treat all persons with dignity and respect. Failure to comply with this paragraph shall be an event of default.

## 23. TERMINATION.

(a) This Agreement may be terminated, the Concessionaire may be entitled to an abatement or reduction of Basic Concession Fee or Additional Concession Fee hereunder, and the Concessionaire may be entitled to quit all or any part of the Premises or Concession Facilities or be released from any obligations hereunder upon thirty (30) days prior written notice for the following reasons:

(i) Damage to all or a substantial part of the Premises or Concession Facilities not caused by Concessionaire;

(ii) Condemnation or other taking of all or a substantial part of the Premises or Concession Facilities;

(iii) Any limitation or prevention of, or any interference with, any use or possession of all or a substantial part of the Premises or Concession Facilities by the City;

(iv) Force majeure causing an inability to perform, due to factors beyond Concessionaire's control such as acts of God, flood, war, riot, fire, explosion, strikes, or acts of government which last for a period greater than one hundred eighty (180) days;

(v) Any final order or judgment by any court, administrative agency or other governmental authority requiring such, or

(vi) Any material breach by the City as provided herein.

(b) This Agreement may be terminated by the City upon thirty days notice if any of the following occurs:

(i) Concessionaire fails to make any payment when due of Basic Concession Fee or Additional Concession Fee; provided, however, Concessionaire shall have a grace period of five (5) business days within to make such payment to the City; or

(ii) ANY MATERIAL BREACH OF THE TERMS AND CONDITIONS OF THIS AGREEMENT.

(iii) Concessionaire, while in possession of the Premises, files a petition for bankruptcy or insolvency or for reorganization under the Bankruptcy Act, or voluntarily takes advantage of such Act by answer or otherwise, or makes an assignment for the benefit of creditors;

(iv) If proceedings are instituted against Concessionaire under any bankruptcy or insolvency law or if a receiver or trustee is appointed for all or substantially all of Concessionaire's property, and such proceedings or receivership or trusteeship are not vacated or dismissed within thirty days after such institution or appointment.

(v) The City may, as the non-breaching party, enter the Premises and Concession Facilities, remove any personal property, and store such property in a public warehouse or elsewhere at the cost of Concessionaire.

#### 24. DELIVERY AFTER TERMINATION.

Concessionaire will deliver the Premises and all City-owned equipment thereon to the City at the termination of this Agreement in as good condition and state of repair as when received, except for ordinary wear and tear, or loss and damage not otherwise caused by Concessionaire.

25. CUMULATIVE RIGHTS. No right or remedy is intended to be exclusive of any other right or remedy and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing at law or in equity. The failure of either party to insist at any time upon the strict performance of any covenant or to exercise any right contained in this Agreement shall not be construed as a future waiver. The City's receipt of any Basic Concession Fees or Additional Concession Fees with knowledge of the breach of any covenant contained in this Agreement shall not be deemed a waiver of such

breach. Neither party shall be deemed to have made any waiver of this or any provision of this Agreement unless expressed in writing and signed by such party.

26. VENUE AND GOVERNING LAW.

Venue for any and all legal action regarding this Agreement shall lie in the District Court of Adams County or Jefferson County, Colorado, and this Agreement shall be governed by the laws of the State of Colorado, and the Charter and Municipal Code of the City of Westminster. Concessionaire agrees that if personal service on Concessionaire cannot be reasonably accomplished, any and all notices, pleadings, and process may be made by serving two (2) copies of the same upon the Colorado Secretary of State, State Capitol, Denver, Colorado, and by mailing by return mail an additional copy of the same to Concessionaire at the address shown in Section 30 herein; that said service shall be considered as valid personal service and judgment may be taken if, within the time prescribed by Colorado law or Rules of Civil Procedure, appearance, pleading, or answer is not made.

27. INDEPENDENT CONTRACTOR.

For the purposes of defining Concessionaire's relationship with City, it is understood and agreed that Concessionaire is an independent contractor and nothing herein contained shall constitute or designate the Concessionaire or any of its employees or agents as agents or employees of the City, nor shall Concessionaire be deemed to be engaged in a partnership or joint venture with the City. The Concessionaire understands and agrees that Concessionaire is not entitled to nor shall receive any City benefits, including vacation, worker's compensation, sick pay or any other benefits from City.

28. ASSIGNMENT.

Neither Concessionaire, nor Concessionaire's successors or assigns, shall assign this Agreement, in whole or in part, nor shall this Agreement be assigned or transferred by operation of law, or otherwise, without the prior consent in writing of the City in each instance. The sale or transfer of a controlling interest, or any interest in excess of twenty-five percent (25%) of the capital shares of Concessionaire or its assigns, or any merger which effects a similar transfer of a controlling interest in Concessionaire or its assigns, shall be deemed to be an assignment of this Agreement. If this Agreement is assigned or transferred, or the Premises or Concession Facilities are occupied by anyone other than the Concessionaire, the City may, after default by Concessionaire, collect Concession Fees from the assignee, transferee, or occupant, and apply the net amount collected to the Concession Fees reserved herein, but no such assignment, transfer, occupancy or collection shall be deemed a waiver of any agreement, term, covenant or condition of this Agreement, or the acceptance of the assignee, transferee, or occupant, or a release of Concessionaire from the performance or further performance by Concessionaire of the agreements, terms, covenants and conditions hereof, and the party originally constituting the Concessionaire under this Agreement shall continue liable under this Agreement in accordance with all the agreements, terms, covenants, and conditions of this Agreement. The consent by the City to an assignment or transfer shall not in any way be construed to relieve Concessionaire from obtaining the express consent in writing of the City to any further assignment or transfer.

29. NOTICES.

(a) All notices, demands and communications hereunder shall be personally served or given by certified or registered mail or via trackable overnight courier, and

- (i) If intended for City, shall be addressed to City at:

City of Westminster  
Attn: Director of Parks, Recreation and Libraries  
4800 W. 92<sup>nd</sup> Avenue  
Westminster, Colorado 80031

With a copy to:

City Attorney  
City of Westminster  
4800 W. 92<sup>nd</sup> Avenue  
Westminster, Colorado 80031

- (ii) If intended for Concessionaire, shall be addressed to:

Evergreen Alliance Golf Limited, L.P.  
Attention: Mr. Todd Watson, V.P. of Business Development  
10870 Benson Drive  
Suite 2190  
Overland Park, KS 66210

With a copy to:

Legal Counsel  
Evergreen Alliance Golf Limited, L.P.  
Attention: Ms. Lynn Marie Mallery  
8650 Freeport Parkway South  
Suite 200  
Irving, TX 75063

(b) Any notice given by mail shall be deemed delivered when sent by certified mail or via trackable overnight courier, addressed as above, with postage prepaid, or when served personally at the applicable address.

30. ENTIRE AGREEMENT.

This is the entire agreement between the parties and there are no other terms, obligations, covenants, representations, statements, or conditions, oral or written, of any kind whatsoever. Any agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of this writing.

31. SEVERABILITY.

If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby. It is also the intention of the parties to this Agreement that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there be added as part of this Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.



IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

EVERGREEN ALLIANCE GOLF LIMITED, L.P.  
8650 FREEPORT PARKWAY SOUTH  
SUITE 200  
IRVING, TX 75063

CITY OF WESTMINSTER  
4800 W. 92<sup>ND</sup> AVENUE  
WESTMINSTER, COLORADO 80031

\_\_\_\_\_  
TODD WATSON  
Vice President Business Development

\_\_\_\_\_  
J. BRENT MCFALL  
City Manager

Attest:

Attest:

\_\_\_\_\_  
Title

\_\_\_\_\_  
City Clerk

Approved as to Legal Form:

\_\_\_\_\_  
City Attorney

## **EXHIBIT C**

### **GUIDELINES & STANDARDS OF OPERATIONS**

#### **Cleanliness Standards**

1. The Concessionaire will maintain, at all times, the kitchen, food preparation, dining, and banquet areas, and all equipment, fixtures, paraphernalia, materials, utensils and other items therein, in a clean and sanitary manner. Concessionaire shall keep the Concession Facilities clear of broken glass, litter, debris, and garbage. Concessionaire shall dispose of any waste water or other waste fluid in the sanitary sewer. In the event waste fluids may not legally be disposed of in the sanitary sewer, Concessionaire is responsible for disposing of same in an appropriate and lawful manner.
2. The Concessionaire shall comply with all applicable health and sanitation laws and regulations, including:
  - a. The sanitation code of the U.S. Food Service Industry as published by the National Restaurant Association.
  - b. All state of Colorado acts and regulations governing food service operations.
  - c. All applicable City and county public health/sanitation regulations.
  - d. Any specific guidelines established by the Manager.
3. At all times, the Concessionaire shall permit and facilitate inspection of the food/beverage areas by the City and by public health/sanitation/building/fire authorities so authorized.
  - a. The Concessionaire shall provide a copy of all health department inspections to the Manager on the same day the inspection form was issued. All health department violations are to be corrected within the time period allowed by the health inspector or within 48 hours, whichever is sooner, unless approval for a delay is granted by the health department or the Manager.
  - b. Failure to pass health inspections, unless all failures are corrected within 48 hours, is a material breach of this Agreement and may result in termination.
4. Concessionaire shall conduct inspections of the food service facilities once weekly. An inspection checklist shall be prepared and completed by Concessionaire for each inspection and the checklists shall be made available to the Manager upon request. The inspection report shall include corrective measures taken or to be taken by Concessionaire. Concessionaire shall also conduct daily inspections and take immediate corrective measures in all areas of the Premises and Concession Facilities.
5. The City shall conduct a formal inspection of the food service facilities a minimum of four times per year, or as deemed necessary by the City. The Concessionaire shall accompany the City's designated representative during the inspection.
6. Failure to comply with this section, after notice from the City, shall be an event of default.

## **Facility and Equipment Maintenance**

1. The Concessionaire shall be responsible for the maintenance, repair or replacement of all equipment and facilities for food and beverage handling, restaurant, banquet facilities and Concession Facilities. Prior to the first day of business under this contract, the Manager and the Concessionaire will conduct a walk-through inspection of all equipment and the facilities to note any repair/replacement items responsible to the City. After the walk-through, the Concessionaire shall be responsible for any additional repairs or replacement as required in this agreement.
2. The City shall be responsible for maintenance, repair or replacement of electrical, plumbing, and sewer systems, HVAC, the exterior of the building, and parking lots. The City may, as it deems necessary, replace floor coverings that are worn or damaged by ordinary usage. However, floor coverings that are worn or damaged because of actions or omissions of Concessionaire shall be paid for by Concessionaire.
3. Failure to comply with this section, after notice from the City, shall be an event of default.

## **Custodial Maintenance**

1. The Concessionaire will be responsible for custodial maintenance of the dining room, bar, banquet room, kitchen, snack bar, patio area, delivery area, cooktop ventilation hood system, grease trap system, basement restaurant storage area, and restaurant office areas.
2. The City shall be responsible for custodial maintenance of the entry lobby, restrooms, pro shop, golf staff office and storage areas, and the exterior entry way.
3. Custodial maintenance shall include, but not be limited to, routine sweeping, vacuuming, dusting, spill clean-up, debris and litter pick-up, laundry of linens and cloths, as well as carpet cleaning, window cover cleaning, interior and exterior window washing, and painting of walls and ceilings. All areas will be kept clean and neat at all times.
4. The City shall be responsible for snow removal of the parking lot and entryway except the Concessionaire shall be responsible for the entryway when Concessionaire is conducting an event in the restaurant prior to the golf course operating hours.
5. Concessionaire shall be responsible for trash removal service, grease removal service, and the grease trap system. Concessionaire shall not discharge any grease into building drains and must keep all grease in proper containers for disposal. If grease is incorrectly disposed in the drain system, Concessionaire shall be responsible for cleaning or repairing drains or grease trap system
6. Failure to comply with this section, after notice from the City, shall be an event of default.

## **Menu and Pricing**

1. No less than once at the beginning of each golf season (April 1), but no less than once per year, the Concessionaire shall submit a detailed menu and price schedule of all items it proposes to sell, including size, weight and amount of each item. All prices are subject to City approval. The Concessionaire shall plan and prepare imaginative menu selection with an adequate variety

of products, in consultation with the City. Any City contract commitments regarding sole sources, i.e. beverage products, will be utilized by Concessionaire.

2. Concessionaire shall adhere strictly to all pure food laws and regulation as adopted by the State of Colorado or the County Health Department. Food shall be prepared in such a way as to be acceptable to most patrons. Hot food shall be hot and cold food shall be cold. The amount of food served shall be sufficient in relation to price and other services offered. Service shall be prompt, giving attention to the patron's needs and promoting a friendly relationship. The food shall complement the facility and shall reflect the eating preferences of most patrons.

3. Failure to comply with this section, after notice from the City, may be grounds for termination.

### **Banquet Events and Tournament Bookings**

1. The restaurant dining room hours, or use, may not be altered for private events scheduled by the Concessionaire without written approval of the Manager. The Concessionaire is not to use the restaurant dining room for private party rental banquets during the business hours designated in this Agreement. The Concessionaire shall have the right to use the restaurant dining room for private party rental banquets after business hours. All private party rental banquets must comply with the operating and liquor and food handling policies set forth in this Agreement.

2. During the peak golf season (normally April 1 – October 31), the Concessionaire shall not book or use the banquet room, except during non-business hours, without the written approval of the Manager. During the peak golf season, golf tournament banquets shall receive priority booking. Usage of the banquet room may be requested during times that are not being used for tournament banquets. These usage requests also require written approval of the Manager.

3. Upon receiving requests for banquets/rentals that require the Manager's written approval, the Manager will respond promptly, approval not to be unreasonably withheld. Failure to respond within 10 days is deemed as acceptance of the request.

### **Entertainment**

All costs for amenities such as background music, live entertainment, cable/satellite tv, and bar video games are the responsibility of Concessionaire. The Manager shall approve any installation prior to installation.

### **Employee Conduct and Appearance**

1. Concessionaire shall be responsible for employment and compensation of its own employees. All employees shall provide prompt and courteous service to all customers and the general public. Concessionaire shall provide qualified supervision, competent management staff, and numbers of employees necessary to maintain good service. Employees shall be clean and maintain appropriate clothing and appearance. Concessionaire shall at all times enforce strict discipline and good order among employees.

2. Failure to comply with this section, after notice from the City, may be grounds for termination.

## **Customer Service**

1. Complaints from restaurant customers must be forwarded to the Manager, in writing, within one working day. All restaurant complaints, whether received by Concessionaire or the City, are to be reviewed by Concessionaire and the customer contacted by Concessionaire or its designated on-site restaurant manger within 48 hours of the filing of the complaint. A written report of the result of the follow-up will be provided to the Manager within five days.

2. If the City receives ongoing customer service complaints, the City may require a performance audit, utilizing customer surveys to determine customer satisfaction. Customers will be asked if they are “very satisfied,” “satisfied,” “dissatisfied,” or “very dissatisfied” with the operations of Concessionaire. A reasonable number of customers shall be surveyed. The acceptable performance standard shall be 75 percent of the surveyed customers rating satisfied or very satisfied. A rating below 75 percent satisfaction may be grounds for termination of this Agreement. If a survey indicates less than 75 percent satisfaction, Concessionaire may request a second survey by an independent third party, at the sole cost of Concessionaire. If the second survey indicates customer satisfaction rating of 75 percent or above, Concessionaire will be deemed to have met the standard of acceptable performance.



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
January 7, 2002

**SUBJECT:** Standley Lake Renovation Construction IGA and Owner's Representative Services IGA

**Prepared By:** Dan Strietelmeier, Senior Water Resources Engineer

**Summary Statement**

- Staff anticipates that the construction bids for the Standley Lake Renovation Project will be advertised in January, contract and bid award will be presented to City Council in March, with a notice of award issued and construction beginning in April. The project is scheduled to be completed in 2004.
- The attached Intergovernmental Agreement (IGA) was developed with the Cities of Northglenn and Thornton and will memorialize each City's commitment to both funding and completing the project.
- The IGA establishes a construction project management plan and commits the Cities to hire an Owner's Representative who will assist in contract administration and project management. The Owner's Representative will provide services through the completion of construction.
- The Cities of Thornton and Northglenn also plan to seek Council approval of the IGA and corresponding agreements on January 8 and 10 respectively.
- A team of consultants led by Joe Cesare and Associates submitted the second lowest proposal for Owner's Representative services with a proposed cost of \$369,080. Each City will be responsible for one-third of the cost or \$123,027.
- The estimated construction cost for the renovation project, including contingencies, is \$35 million, with each City paying \$11.7 million or one-third share.

**Expenditure Required:** \$123,027

**Source of Funds:** Utility Fund Standley Lake Renovation Capital Improvement Project

**Recommended City Council Action**

Authorize the Mayor to execute the Standley Lake Renovation Pre-construction IGA with the cities of Northglenn and Thornton and the Farmers Reservoir and Irrigation Company (FRICO) and authorize the City Manager to execute an IGA with the cities of Northglenn and Thornton and Joseph A. Cesare and Associates for Owners' Representative services for \$123,027, one third of the contract amount, and charge the expense to the appropriate Utility Fund Standley Lake Renovation Capital Project Account.

**Policy Issue(s)**

Should the City of Westminster enter into a cooperative agreement with the cities of Northglenn and Thornton prior to executing a contract for construction of the Standley Lake Renovation project? Should the City award the Owner's Representative contract to the lowest bidder without regard to the firm's experience, qualifications and recommendations from the Cities of Northglenn and Thornton?

**Alternative(s)**

City Council could choose to not enter into the construction IGA or continue negotiations and delay approval of the IGA until the construction contract is presented to City Council in March. The City could choose to award the Owner's Representative contract to one of the other bidders or not hire an Owner's Representative.

**Background Information**

The Standley Lake renovation project includes a new spillway, new outlet tunnels and additional berms along the downstream toe of the dam. An internationally known panel of experts hired by the Standley Lake Cities in the early 1990's recommended the project components. The design phase began in 1999 and was completed by a team of consultants led by CH2M Hill. Other members of the design team include GEI and Rocky Mountain Consultants. The design team will also be responsible for construction management duties for the project. Project enhancements have extended the construction period to approximately 27 months. CH2M Hill's proposal for construction management covered only 14 months and will be renegotiated and presented to the respective City Councils at a later date.

The proposed Construction IGA was developed from an IGA between the Cities and FRICO currently in place for the design. The project management committee established in the IGA is composed of representatives from the three Cities. FRICO, as owners of Standley Lake, will also sign the IGA but will not have a voting member on the project management committee. Also included in the IGA is a method for handling disputes among the Cities. All project issues such as change orders or payment approvals require a unanimous decision by the voting committee members. If an issue is disputed, it will be brought to each of the three Cities' management for consultation and will be settled by a majority vote after this consultation is completed.

A change order limit that could be approved by the committee was also established in the IGA. The limit is set at \$750,000 per individual change order, which is approximately 2% of the estimated project cost. The cumulative amount of project change orders may not exceed the contingency amounts budgeted by each city. The IGA was negotiated over a period of several months and is intended to provide a mechanism where the project can continue moving forward in spite of having three decision makers involved in the process. Once construction is underway, delays to the project could be very costly.

Due to complexity of the project components and the fact that there are three owners, it was determined that a third party Owner's Representative firm would be needed to act as a liaison for the Cities and provide oversight for the design contract and construction contract. The Owner's Representative will represent the Cities at weekly construction meetings, provide coordination between the Cities, engineer and contractor, and make recommendations on items such as requests for payments and change orders.

The Cities developed a list of consulting firms to receive Request for Proposals (RFP's) for the Owner's Representative. Fourteen firms were chosen for the list based on their experience in dam construction projects, experience in working with the Cities, and direct experience on Standley Lake dam. Four proposals were submitted on October 22, 2001 and the proposing consultant teams were interviewed. The four proposals and costs are:

Consulting Firm(s)  
Hydro Civil Consultants

Proposed Cost  
\$295,470

Joe Cesare and Associates	\$369,080
Owner's Representative Inc.	\$404,000
URS Corporation	\$450,060

After thorough review of the proposals that were submitted, the Cities' staff are recommending the team led by Joe Cesare and Associates to perform the Owner's Representative duties. Also included on the team are Applegate Group, Inc and CTL/Thompson, Inc.

The Joe Cesare team offers excellent qualifications including good applicable experience in earthwork, dams, tunnel lining, and geotechnical work. With basically the same team, a similar project is nearing completion with the construction of Fortune Reservoir. The reservoir, owned by Consolidated Mutual Water Company, is located west of Standley Lake and will be ready to begin storing water this spring. The team offers an excellent organizational plan and resources that will be used to staff the project including the use of a professional engineer to track on site construction inspection.

Joe Cesare has previously managed projects this size in an owner's representative role. Mr. Cesare has been involved in Standley Renovation project before so he understands the state requirements and could provide an early indication if a change of conditions is encountered. Mr. Cesare will be the person involved with all change order negotiations, which staff from the Cities believes is an area where Mr. Cesare will be very beneficial. The Joe Cesare team will provide applicable experience and resources that will benefit the three Cities and provide the best value to the Cities.

Current schedule and construction sequencing were used as the basis for the \$35 million project cost estimate and any delay from the April start up would likely result in increased cost. Westminster will issue bonds in March to fund its portion of the project. The Construction IGA provides a sound framework for project management. With continued cooperation among the three Cities and assuming no delays in their approval process, the project can be constructed during the recommended time frame protecting the safety and structural integrity of Standley Lake Dam.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment



# STANDLEY LAKE DAM RENOVATION INTERGOVERNMENTAL AGREEMENT

This Standley Lake Dam Renovation Intergovernmental Agreement (Agreement) is made this \_\_\_\_\_ day of January, 2002 among the City of Thornton (Thornton), a municipal corporation, the City of Westminster (Westminster), a municipal corporation, the City of Northglenn (Northglenn), a municipal corporation (collectively, the Cities), and the Farmers Reservoir and Irrigation Company (FRICO)(collectively, the Parties).

## WITNESSETH

WHEREAS, FRICO owns and controls land, water decrees evidencing certain appropriations of water commonly known as water rights and certain facilities used for the diversion, storage and distribution of certain waters located in the Clear Creek Drainage Basin and included among those facilities and water rights are those referred to as Standley Lake Reservoir; and

WHEREAS, the Cities intend to enter into an Agreement (the Construction Contract) to Furnish Construction Services for Improvements to Standley Lake Dam (the Project); and

WHEREAS, the Cities intend to enter into an agreement with a consultant for Owners' Representative Services (ORS Agreement); and

WHEREAS, the Construction Contract and the ORS Agreement describe certain rights and duties of the Cities; and

WHEREAS, CH2M Hill (the Design Engineer) has been previously engaged to perform design and construction management services for the Project; and

WHEREAS, it is appropriate and necessary to set forth in a separate Intergovernmental Agreement these rights and duties in greater detail and mechanisms for exerting such rights and duties; and

WHEREAS, Section 18(2)(a) of Article XIV of the Colorado Constitution, as well as Sections 29-1-201, et seq., and 29-20-105 of the Colorado Revised Statutes authorize and encourage governments to cooperate by contracting with one another for their mutual benefit.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

1. Project Management Committee. Following execution of this Agreement, the Parties shall establish a project management committee (Committee) which shall represent the Parties with regard to the Construction Contract and ORS Agreement. Each entity shall appoint one person and one alternate to represent the entity. The Committee shall communicate and meet as necessary to fulfill its duties.
  - a. Voting. Action by the Committee shall require a unanimous vote except as set forth in Paragraph 4. Each Committee member is required to vote on all issues that require a vote. Except as otherwise provided herein, the FRICO representative may provide input for the Committee's consideration, but shall not have the power to vote.

- b. Construction Contract and ORS Agreement. The Committee shall solicit construction bids for the Project. In the event the construction bids received for the Project contain irregularities or materially exceed the amount budgeted by each City for the Project the Committee shall meet to determine the appropriate course of action to take. The Committee shall vote and act upon one of the following courses of action within no more than 30 days after the opening of the bid:
- (1). Request an additional appropriation
  - (2). Reduce the scope of the Project
  - (3). Revise and re-bid the Project
  - (4). Develop a workable phasing plan for the project to meet budgetary constraints
  - (5). Decide to abandon the Project under this Agreement. In the event this course of action is decided each Party shall be responsible for one third of the costs accrued to the date of abandonment in connection with the Project.

Upon the Cities acceptance or modification of the bid on the basis of any of the above courses of action the Cities shall develop a Construction Contract and shall promptly submit such Construction Contract including any other agreements contemplated by this Agreement for approval including any subsequent reduction or revision to the Project scope as required by each City's policies.

- c. In no event will a notice to proceed with the construction of the Project commence until all Cities have approved the Construction Contract and have adequate funds appropriated under their City policies to cover the costs associated with the Project.
- d. Contractor Change Order Requests. The ORS Consultant and Design Engineer shall evaluate and submit the Contractor's change order requests to the Committee with recommendations for action to be taken. The voting members of the Committee shall meet or otherwise make arrangements to vote for or against the change order requests and recommendations within ten business days of receipt by the Committee. The voting members shall vote on change order requests less than Seven Hundred Fifty Thousand Dollars (\$750,000) unless approval of such change order request would exceed the budgeted appropriation including contingency allocated to the Construction Contract. In the event the Committee receives change order requests that are equal to or exceed Seven Hundred Fifty Thousand dollars (\$750,000) or approval of any change order request would exceed the budgeted appropriation including contingency allocated to the Construction Contract then, within 10 business days, the Committee shall vote to:
- (1). Submit the change order request for approval and additional budget appropriation, as necessary, in accordance with each Cities policies and procedures; or
  - (2). Reduce or revise the scope of the work proposed in the change order request and negotiate with the contractor for a reduced price; or
  - (3). Reject the change order under the terms of the Construction Contract.

In the event there is not unanimous consent among the Committee regarding a change order request or if an appropriation was not approved pursuant to Paragraph 1(d) the issue shall be resolved as outlined in paragraph 4 below.

2. Project Completion. The Parties agree and acknowledge that time is of the essence and it is essential to each Party that all critical components of the Project be completed in a diligent and timely manner.
3. Escrow Agreement. Payments under the Construction Contract and ORS Agreement and any other agreements contemplated by this Agreement or the Project shall be shared equally among the Cities. The Project payments will be made from escrow accounts established in accordance with the terms of an Escrow Agreement made between the Cities and an agreed upon Escrow Agent. The Cities shall establish separate escrow accounts with the Escrow Agent. The Cities shall share equally in the costs of maintaining the Escrow Accounts.

Each City shall timely deposit escrow funds sufficient to pay its portion of the monthly Project invoices. Funds may be drawn from the Escrow Accounts by the Escrow Agent only upon the approval of the Committee.

4. Dispute Resolution.

In the event the Committee is unable to reach a unanimous decision the Committee shall set a date of no more than three business days from the date of an impasse to reconvene and rehear the issue. If at the second meeting the Committee remains divided the Committee members shall vote and the decision of the majority shall be deemed to be the decision.

All Cities agree to proceed with the actions authorized by said majority decision except that if any City desires to pursue legal action with regard to a decision it shall agree to the decision on an interim basis with complete reservation of its rights and without prejudice to any claims that it may have against the other Cities or others until a final court-ordered determination is obtained or other resolution reached. Each City hereto shall be responsible for any and all of its own costs and fees for any suits, demands, costs or actions at law resulting from or arising out of this Agreement.

5. Four-Way Agreement. On June 27, 1979 the parties to this Agreement entered into an agreement commonly referred to as the Four-Way Agreement. Nothing in this Agreement shall eliminate or restrict the rights and obligations of the Parties as set forth in the Four-Way Agreement except as specifically provided below:

(a) The Parties hereto agree that upon successful completion of an operational new outlet works as contemplated in Article 1 of the Construction Contract, the Parties shall amend the Four Way Agreement dated June 27, 1979 to delete Paragraphs 8 and 17.g in their entirety.

6. Charter Compliance. The Cities intend this Agreement to be made in compliance with the charters of each respective City.
7. Term of Agreement. This Agreement shall continue in full force and effect until terminated by all the Parties provided, however, that each City's commitment to appropriate funds beyond the first fiscal year of this Agreement is subject to existing Colorado Constitutional provisions.

8. Governmental Immunity. The Parties hereto understand and agree that the Cities and their respective officers and its employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (currently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq., as it is from time to time amended.
9. Insurance. The Cities and FRICO shall each be named as an additional insured on all insurance certificates provided by the Contractor. The Cities agree that the terms and provisions of the Construction Contract shall provide that FRICO shall be an additional insured of all general liability or other insurance to be obtained or maintained by any contractor and subcontractor employed as a result of this agreement. The general liability coverage, in aggregate with the Cities as named additional insureds of all such insurance provided by any contractor or subcontractor shall be equal to the insurance coverages required by the Construction Contract.
10. Indemnity. To the extent permitted by law, the Cities agree to indemnify and defend FRICO in the event of any lien or claim that could result in a lien or encumbrance against the property owned of record by FRICO in Jefferson County, Colorado, arising from or associated with the Project. The Cities shall take such steps as may be necessary to obtain a release of any lien claim against the property upon which the construction arising from this agreement shall occur.
11. Assignment. This Agreement shall not be assigned without the prior written consent of all Parties.
12. Notices. Any notice to the Parties which is required or permitted by this Agreement shall be in writing, and shall be deposited in the United States mail, postage prepaid, addressed as follows:

Thornton City Manager  
City of Thornton  
9500 Civic Center Drive  
Thornton, CO 80229

Northglenn City Manager  
City of Northglenn  
11701 Community Center Drive  
Northglenn, CO 80233

Westminster City Manager  
City of Westminster  
4800 West 92<sup>nd</sup> Avenue  
Westminster, CO 80031

FRICO  
80 South 27<sup>th</sup> Avenue  
Brighton, CO 80601

13. Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the Parties and their respective successors and assigns.

In Witness Whereof the Parties hereto have executed this Agreement to be effective as of the date first above written.

ATTEST:

CITY OF THORNTON

\_\_\_\_\_  
Noel Busck, Mayor

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Thornton City Attorney

CITY OF WESTMINSTER

\_\_\_\_\_  
Ed Moss, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Westminster Assistant City Attorney

CITY OF NORTHGLENN

\_\_\_\_\_  
Kathleen M. Novack, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Northglenn City Attorney

FARMERS RESERVOIR AND IRRIGATION COMPANY

ATTEST:

\_\_\_\_\_  
Pete Roskop, President

\_\_\_\_\_  
Mary E. Hanssen, Secretary

STATE OF COLORADO     )  
  )ss.  
COUNTY OF ADAMS     )

The foregoing Standley Lake Dam Renovation Intergovernmental Agreement was subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by Pete Roskop as President and by Mary Hanssen as Secretary of the Farmers Reservoir and Irrigation Company, Inc.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
January 7, 2002

**SUBJECT:** Treated Water Computer Modeling Contract

**Prepared By:** Diane M. Phillips, Capital Improvement Coordinator

**Summary Statement:**

- HDR Engineering recently completed the creation of a treated water computer model for internal use and at this time modeling is needed to develop specific design criteria for treated water capital projects and to study operational issues.
- City Staff has not previously used the model and training is required to operate the model internally.
- Transferring the model to another consulting firm would mean that a new firm would need time to become familiar with the City's water and treated water systems and operations, and the computer model.
- HDR will provide hourly computer modeling services and RG Engineering reviewed their scope of work for the modeling tasks and found it prudent.
- It is recommended that the City contract with HDR Engineering to provide design study and operational computer modeling for the next several months, as the most efficient process to develop an ongoing internal modeling system.

**Expenditure Required:** \$145,000

**Source of Funds:** HDR Settlement Funds

**Recommended City Council Action:**

Authorize the City Manager to execute a contract with HDR Engineering to provide treated water computer modeling for the next several months in an amount not to exceed \$145,000.

**Policy Issue(s):**

Should the City award a not to exceed contract to HDR Engineering for treated water computer modeling in the amount of \$145,000.

**Alternative(s):**

The City could competitively bid the modeling task. Other firms would have to take time to become familiar with the City's system and the model and would not be as efficient in terms of time or experience. Modeling of time sensitive projects would be delayed and would not be as cost effective.

**Background Information:**

HDR Engineering has completed the treated water master plan and the treated water computer model for internal purposes. The model is now ready for use to study operational problems and to assist with design studies related to capital improvement projects. City staff is not yet familiarized with or trained on the use of the computer model and does not have staff resources available at this time to dedicate to the modeling.

Modeling for zone boundary evaluation for the treated water pressure zone around the Semper Water Treatment Facility needs to begin immediately so that a determination can be made of the pipe installation that will be needed, and so that the capital project can begin.

Other capital and operational studies that need to begin soon are the evaluation of the Countryside Tank, modifications to Zone 5 water distribution system, operational study of the Apple Blossom Neighborhood, the Northgate Redevelopment Service area addition, the northwest service area expansion and other operational analysis issues.

HDR Engineering is very experienced in using the model and understands the City's treated water system and can effectively conduct these studies over the next several months at which time City Staff will be prepared to do most of the treated water modeling. HDR will provide up to 1,450 hours of modeling at the rate of \$100 per hour. Staff negotiated this fee with HDR and also compared their fee with typical modeling service fees and found the fee to be fair and reasonable.

The \$1.5 million HDR Semper Clearwell settlement funds were broken down into \$825,000 that was dedicated to sole source supply of services and \$825,000 that was dedicated to competitive bidding. The sole source funds are committed to the Treated, Reclaimed and Wastewater Master Planning and associated modeling and also the design and construction management of the new raw water line that will supply the Northwest Water Treatment Plant that is being constructed. The \$825,000 of competitive funds have not been used for any project and are available.

Respectfully submitted,

J. Brent McFall  
City Manager





**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
January 7, 2002

**SUBJECT:** TABLED Resolution No. 71 re Carter (a.k.a. Duggan) Annexation Petition (Harmony Park)

**Prepared By:** Patrick Caldwell, Planner II

**Summary Statement**

- The City received a proposal to annex a 0.7-acre parcel in the proximity of 130<sup>th</sup> Avenue on the east side of Zuni Street. (See attached map)
- The City Council continued this item from December 10, 2001 to January 7, 2002 because it was believed that ownership of the parcel changed on December 6, 2001. This has been confirmed. Therefore, the petition for annexation is not in compliance with the State Statute.
- No new petition has been submitted with current ownership information.

**Expenditure Required:** None

**Source of Funds:** None

**Recommended City Council Action**

Remove Resolution No. 71 from the table and reject this Resolution since a new annexation petition containing the name and address of the current owner has not yet been submitted.

**Policy Issue(s)**

Whether the City should accept the petition for annexation of the Carter property.

**Alternative(s)**

Continue the annexation petition to a date certain.

**Background**

The 0.7-acre parcel is located immediately east of and adjacent to Zuni Street and approximately 500 feet north of 128<sup>th</sup> Avenue. It is in unincorporated Adams County and is used for residential purposes, consistent with its zoning in Adams County. This parcel will be incorporated into the abutting Harmony Park residential development.

The Official Development Plan (ODP) for the Village at Harmony Park encompassed 109.54 acres and was approved for 309 single family detached residential units by the City Council on July 9, 2001. The ODP surrounds the parcel at the north, east and south. The City of Broomfield is immediately west across Zuni Street.

The proposed annexation was contemplated with the design of the Village at Harmony Park. Subsequent amendments to the plans for the Village at Harmony Park will incorporate the annexed parcel in a manner consistent with the development. If the parcel is not annexed it would remain an out parcel and would be out of character with the remainder of Harmony Park.

Upon receiving a petition for annexation, the City Council is required by State Statute to make a finding of whether or not said petition is in compliance with Section 31-12-107 (1) C.R.S. In order for the petition to be found in compliance, Council must find that the petition contains the following information:

- An allegation that the annexation is desirable and necessary
- An allegation that the requirements of Section 31-12-104 and 31-12-105 C.R.S have been met. (These sections are to be reviewed by the Council at the formal public hearing.)
- Signatures and mailing addresses of at least 50% of the landowners of the land to be annexed. (In this case, Gaye Lynne Carter (a.k.a. Gaye Lynne Duggan) signer of the petition, owns 100% of the property.)
- The legal description of the land to be annexed
- The date of each signature
- An attached map showing the boundaries of the area

If the City Council finds that the petition is in substantial compliance with these requirements, a resolution must be approved that establishes a hearing date at which time the Council will review the merits of the proposed annexation.

A new annexation petition containing the name and address of the current owner has not yet been submitted.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment

RESOLUTION

RESOLUTION NO. **71**

INTRODUCED BY COUNCILLORS

SERIES OF 2001

WHEREAS, there has been filed with the City Clerk of the City of Westminster, petitions, copies of which are attached hereto and incorporated by reference, for the annexation of certain territory therein-described to the City;

WHEREAS, the City Council has been advised by the City Attorney and the City Manager that the petition and accompanying map are in substantial compliance with Sections 31-12-101, et.seq., Colorado Revised Statutes, as amended;

NOW, THEREFORE, be it resolved that by City Council of the City of Westminster that:

1. City Council finds the said petitions and annexation maps to be in substantial compliance with all state statutory requirements, including C.R.S. Section 31-12-107 (1).
2. City Council hereby establishes January 28, 2002, 7:00 PM at the Westminster City Council Chambers, 4800 West 92nd Avenue, for the annexation hearing required by C.R.S. Section 31-12-108 (1).
3. City Council hereby orders the City Clerk to give notice of the annexation hearing in accordance with C.R.S. Section 31-12-108 (2).

Passed and adopted this    day of                   , 2001.

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk



**WESTMINSTER**  
**COLORADO**

### Agenda Memorandum

City Council Meeting  
January 7, 2001

**SUBJECT:** TABLED Construction Contract and Services for Quail Creek/Bull Canal Relocation

**Prepared By:** Dan Blankenship, Senior Projects Coordinator

### Summary Statement

- On May 14, 2001, Council authorized the City Manager to execute a professional services agreement for the preparation of plans and specifications for the relocation of Quail Creek and the Bull Canal in advance of the 136<sup>th</sup> Avenue interchange construction.
- On November 27, 2001, 17 bids were received and opened for the construction of the relocation project. The low bidder is Tarco, Inc. with a bid of \$1,545,574.70.
- The proposed relocation of Quail Creek is the most cost effective means to convey the runoff flows from Huron Street to Big Dry Creek. The relocation also removes approximately three-quarters of the Mowery property south of 136<sup>th</sup> Avenue and east of Huron Street from the flood plain, which then opens the property for development.
- The proposed relocation of Quail Creek provides an open outlet for stormwater that has historically backed up into the Quail Crossing park and should alleviate the flooding nuisance that has occurred in the park and in the channel along the north side of 134<sup>th</sup> Avenue between the park and Huron Street.
- The relocation of the Bull Canal is consistent with the draft I-25 land use plan and will reduce the area that the canal occupies between Huron Street and 136<sup>th</sup> Avenue.
- The relocation of the Bull Canal will require an exchange of land between the City and the Farmers Reservoir and Irrigation Company (FRICO) and an exchange between the Mowerys and FRICO. An intergovernmental agreement between the City and FRICO addressing the canal relocation and the property exchange is currently being drafted and will be presented to Council for approval in early 2002.
- The 136<sup>th</sup> Avenue interchange intergovernmental agreement requires Thornton to contribute \$315,000 to the relocation project upon completion of the project.

**Expenditure Required:** \$1,829,000 (\$315,000 of which will be subsequently reimbursed by Thornton).

**Source of Funds:** 136<sup>th</sup> Avenue Interchange GCIP account (early appropriation of bond proceeds).

### Recommended City Council Action

Remove this item from the Table and award the Quail Creek/Bull Canal Relocation project to Tarco, Inc., authorize the City Manager to execute an agreement with Felsburg Holt and Ullevig for engineering design support during construction and construction management services for the project, and authorize the expenditures up to \$1,829,000 for the construction of the project including the services to be provided by Felsburg Holt & Ullevig and a construction contingency of \$166,232, subject to issuance of a 404 permit by the Corps of Engineers.

**Policy Issue(s)**

1. Should the relocation of Quail Creek and Bull Canal proceed at this time?
2. Should the award be made with the condition that the contract not be signed until the Corps of Engineers has either issued the 404 permit or verbally indicated that they will issue the permit for the project.

**Alternative(s)**

1. Delay the relocation project. This is not recommended because the bids are extremely favorable. Furthermore, the relocation of the Bull Canal needs to occur in the winter months while there is no demand for irrigation water and an extended delay could create an adverse impact on the interchange project.
2. Do not proceed with the project. This is not recommended because the relocation of Quail Creek and the Bull Canal is required for the construction of the 136<sup>th</sup> Avenue interchange.

**Background Information**

On May 14, 2001, Council authorized the City Manager to execute a professional services agreement for the preparation of plans and specifications for the relocation of Quail Creek and the Bull Canal in advance of the 136<sup>th</sup> Avenue interchange construction. The relocation was originally part of the interchange project. However, during the environmental assessment process and preliminary design, it became evident that it would be in the best interests of the project to separate the creek and canal relocation and complete them prior to the start of construction of the interchange.

The proposed relocation of Quail Creek is the most cost effective means to convey the runoff flows from Huron Street to Big Dry Creek. The relocation also removes approximately three-quarters of the Mowery property south of 136<sup>th</sup> Avenue from the flood plain, which then opens the property for development. The relocation of Quail Creek will also provide a release for water that has historically backed up into the channel and pond north of 134<sup>th</sup> Avenue and west of Huron Street. The relocation of the Bull Canal is consistent with the draft I-25 land use plan and will reduce the land area that the canal occupies between Huron and 136<sup>th</sup> Avenue.

The relocation of the Bull Canal requires an exchange of land between the City and FRICO and the Mowerys and FRICO. When completed, the relocated Bull Canal will occupy less land than the existing canal and the new canal will not inhibit the development of either the City's property or the Mowery's property. The relocation project is scheduled to be constructed in the first half of 2002 with the relocation of the Bull Canal being completed in early spring prior to the need to convey irrigation water, subject to issuance of a 404 permit by the Corps of Engineers. An intergovernmental agreement with FRICO for the relocation is currently being developed and is scheduled to be presented to Council in early 2002. The agreement will address the exchange of land as well as how the canal is incorporated into the proposed development of the area.

On November 27, 2001, 17 bids were received and opened for the project. Tarco, Inc. is the confirmed low bidder with a total bid of \$1,545,574.70. The second low bid was submitted by Dynamic Development in the amount of \$1,583,968.68 and the engineer's estimate was \$2,645,108.10. A complete summary of the bids is attached.

Proposals for construction management and observation services were solicited and proposals were received from three consulting firms. Two firms were interviewed and the project designer, Felsburg Holt and Ullevig (FHU) is being recommended to provide these services because they were equally as qualified as the other firms, they are most knowledgeable of the project and they proposed the lowest fee. In addition to the construction management services, FHU submitted a proposal to provide engineering design support for construction and wetlands mitigation monitoring as required by the Corps of Engineers.

The project includes two acres of wetland mitigation. The total fee for the construction management, engineering support and wetlands monitoring is \$117,192.94. A summary of the construction management proposals is attached.

The total expenditure requested for the project is \$1,829,000, which includes the construction, construction management, engineering support, wetlands monitoring and a ten percent (10%) contingency for any unforeseen conditions. Upon completion of the project, Thornton will pay \$315,000 to the City for the relocation as agreed upon in the 136<sup>th</sup> Avenue interchange construction intergovernmental agreement. Also, the excess excavated material from the relocation project will be stockpiled at the northwest quadrant of 136<sup>th</sup> Avenue and I-25. The material generated will almost completely meet the fill material needs for the construction of the west half of the interchange and will result in a savings to Westminster for the interchange project. The following is a summary of the requested expenditures.

Construction Contract	\$1,545,575
Construction Management	\$ 77,384
Engineering Services	\$ 39,809
Contingency	\$ 166,232
Total	\$1,829,000

The recommended action was originally scheduled for the December 17, City Council meeting but was Tabled due to comments received from the Corps of Engineers that the State Historic Society had concerns about potential historic sites in the project area. Since that time, an archeologist has performed a field investigation and has verbally indicated that they found nothing of historic significance. However, the Corps also received comments from the Environmental Protection Agency, which will be addressed with the Corps at a meeting on January 4, 2002. It is anticipated that at this meeting, the Corps will provide a verbal indication of the permit status. A 404 permit from the Corps of Engineers is required because the project impacts approximately 2 acres of wetlands, which are located along the current alignment of Quail Creek.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachments



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
January 7, 2002

**SUBJECT:** Public Hearing and Action on the 112<sup>th</sup> & Federal Partnership Preliminary Development Plan 2<sup>nd</sup> Amendment

**Prepared By:** Patrick Caldwell, Planner II

**Summary Statement**

- City Council is requested to hold a public hearing and take action regarding the application by the Bosch Land Group LLC to amend the Preliminary Development Plan (PDP) of the 112<sup>th</sup> & Federal Partnership.
- The request is to change approximately 8 acres that are designated for commercial use to residential use. The residential density would average 3.5 dwellings per acre and would be consistent with the Westminster Comprehensive Land Use Plan (CLUP) designation for this site. Six acres would retain the commercial land use designation at this corner. (See attached vicinity map.)

**Expenditure Required:** None

**Source of Funds:** None

**Recommended City Council Action**

1. Hold a public hearing.
2. Approve the Second Amended 112<sup>th</sup> & Federal Partnership Preliminary Development Plan within the 112<sup>th</sup> & Federal Partnership Planned Unit Development. This recommendation is based upon the findings set forth in Section 11-5-14 of the Westminster Municipal Code.

### **Planning Commission Recommendation**

The Planning Commission held a public hearing on December 11, 2001, and by a vote of seven to zero (7 - 0), recommended that the City Council approve the Second Amended 112<sup>th</sup> & Federal Partnership Preliminary Development Plan.

The Planning Commission found that the PDP amendment is in conformance with Section 11-5-14 of the City Code regarding standards for amendments to the Preliminary Development Plan.

### **Policy Issue**

Whether the City should approve the Second Amended 112<sup>th</sup> & Federal Partnership Preliminary Development Plan within the 112<sup>th</sup> & Federal Partnership Planned Unit Development.

### **Alternative**

Recommend the City Council deny the Second Amended 112<sup>th</sup> & Federal Partnership Preliminary Development Plan within the 112<sup>th</sup> & Federal Partnership Planned Unit Development. This recommendation is based upon the findings set forth in Section 11-5-14 of the Westminster Municipal Code.

### **Background Information**

#### Location/Surrounding Land Uses/Comprehensive Land Use Plan Designations

The 112<sup>th</sup> & Federal Partnership PDP is located at the northeast corner of 112<sup>th</sup> Avenue and Federal Boulevard.

South - across 112<sup>th</sup> Avenue is the Savory Farms Subdivision; zoned PUD, with residential uses; CLUP designation is Single-Family Detached – Low Density Residential (up to 2.5 dwelling units per acre (dupa)).

North - adjacent, is the Ranch Reserve 2 Subdivision; zoned PUD, with residential uses; CLUP designation is Single-Family Detached – Medium Density Residential (up to 3.5 dupa).

East - adjacent, is the Ranch Reserve 2 Subdivision; zoned PUD, with residential uses; CLUP designation is Single-Family Detached – Medium Density Residential (up to 3.5 dupa).

West - across the proposed Decatur Street is the undeveloped 6-acre commercial parcel; within the 112<sup>th</sup> & Federal Partnership zoned PUD with commercial uses; CLUP designation is Retail Commercial.

#### Site Plan Information

The existing 15 acres of commercial use in this PDP at the northeast corner of 112<sup>th</sup> Avenue and Federal Boulevard have been zoned for this use since 1971 when the property was annexed into Westminster. In 1999 the adjacent 65 acres to the north and east within this PDP were rezoned from a high density multi-family use to medium density residential and open space uses. The City purchased 35 acres and the remainder was approved for 61 single-family detached residential units. A number of facts provide support for the proposed land use change.



- The Colorado Department of Transportation (CDOT) controls access to Federal Boulevard and has consistently denied all vehicular access to Federal Boulevard for this site. Sight distance problems combined with speed limit and acceleration lane location have been cited as reasons for the denial of access. The restricted access has reduced the commercial potential of the 15 acres.
- The PDP amendment will provide additional housing in this area that is approximately two blocks from the 35 acres of open space that the City recently purchased. Public park land and public access trails are planned or in place adjacent to the City owned open space.
- The Ranch Reserve 2 Subdivision that is adjacent to the north and to the east will have a residential edge rather than a commercial edge. This amendment allows an improved transition from the low-density residential use to the commercial use.
- The 30,000 square foot open space proposed on the ODP is an enhancement that would not have been present with full commercial development of this site.
- Decatur Street will act as a formal separation between the commercial land use on the west side and the residential use on the east side.
- The proposed office, retail and day care use on the adjacent 6 acres will be developed at a neighborhood scale with neighborhood rather than regional consumer services available.

#### Traffic and Transportation

The PDP Amendment will not cause traffic volumes to increase in this vicinity. Single-family residential uses at the density proposed typically generate approximately 10 vehicle trips per day. For 27 dwellings an estimated 270 trips are anticipated. This is substantially below the quantity of trips per day for a typical commercial use on 8 acres. A shopping center of approximately 60,000 square feet on 8 acres would usually generate between 2,500 and 4,000 vehicle trips per day. This would vary depending on the specific uses on the site.

The intersection location of Decatur Street at 112<sup>th</sup> Avenue will remain as anticipated in 1999 with the design and approval of the Savory Farms Subdivision that is on the south side of 112<sup>th</sup> Avenue. With this amendment, Decatur Street will be constructed as a public right-of-way connecting to 113<sup>th</sup> Avenue to the north in the Ranch Reserve 2 Subdivision.

#### Service Commitment Category

In 2001 City Council awarded 27 Service Commitments for this 8-acre site as a result of the Category B-1 Competition.

#### Referral Agency Responses

No referral agencies expressed concerns with the proposed land use change.

#### Public Comments

No comments from the public were received.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment(s)



**WESTMINSTER**  
**COLORADO**

**Agenda Memorandum**

City Council Meeting  
January 7, 2002

**SUBJECT:** Resolution No. 1 re Account Transfers Within the CIP Program

**Prepared By:** Kathy Piper, Landscape Architect II

**Summary Statement**

- City Council action is requested to adopt the attached Resolution authorizing a transfer of funds within the General Capital Improvement Program from the Foxshire Park Project to the Promenade Terrace Project.
- Foxshire Park began construction in March of 2001 and was completed in October 2001.
- Foxshire Park Project has a fund balance of \$170,000 after construction.
- Promenade Terrace began construction in April of 2001 with an anticipated completion date of May 2002.
- \$87,000 is requested to be transferred to the Promenade Terrace account. This money will be used for bank stabilization along Big Dry Creek that was not anticipated to be a need in the original contract.

**Expenditure Required:** \$87,000

**Source of Funds:** General Capital Improvement Program

**Recommended City Council Action**

Adopt Resolution No. 1 authorizing the transfer of \$87,000 from the Foxshire Park account to the Promenade Terrace account.

**Policy Issue(s)**

Does City Council wish to fund this account with unused monies from the Foxshire Park General Capital Improvement Program?

**Alternative**

City Council could reject the transfer of monies to the Promenade Project and keep the money for use on other City projects.

**Background Information**

On February 26, 2001, City Council authorized the award of the construction contract for Foxshire Park to Western States Reclamation. Through the City's bidding process selection, Western States Reclamation was the lowest qualified bidder, with a bid \$200,000 lower than the engineer's estimate. The City also received a grant from Adams County in the amount of \$25,000 for Foxshire Park, bringing the total construction budget to \$850,000. Actual construction costs were \$671,000, leaving an excess of \$179,000 in the Appropriation Holding account.

The transfer of monies is an action to address the needs for additional funds into the Promenade Terrace accounts as a result of unanticipated expenses that could not be absorbed within the construction budget.

Shortly after the Notice to Proceed for Promenade Terrace, in March of 2001, the construction survey showed a change in Big Dry Creek since the original design survey was taken. After further investigation, it was clear that a portion of the embankment further eroded into Big Dry Creek, and the Promenade Terrace site had to shift its project borders eight feet into the site. This change happened rapidly and was not a condition in the original survey, which was used to do the design and construction drawings. The Corps of Engineers, Staff, the City's Consultant and the Contractor spent several weeks determining the best way to stabilize the embankment. This resulted in an unexpected cost of \$32,000 for the embankment stabilization work alone.

Additional fees of \$55,000 are requested due to the repercussions from the eroded stream bank. Revisions to the survey, construction drawings, bridge location and footings, additional rip-rap, erosion control fabric for steep slopes, and retaining walls were required to meet the new site constraints. The project will extend past the contract date due to construction changes and will carry over into the spring, requiring additional services by the Consultant for construction administration services. Another recommended change is the addition of a sand filter system to process the water for the cascading waterfall. After discussion with the Public Health Department, it was suggested that adding a sand filter system would help safe guard the public. The cost for the sand filter system is approximately \$25,000. The following transfer breakdown is detailed below:

<u>Promenade Terrace</u>	
Creek Embankment Repair (soil rip rap, concrete thickened edge, concrete boulders, remove & replace compact earth, field survey)	\$32,000
Sand filter system	\$25,000
Additional Work (re-survey site, construction document work, pilings, rip-rap, jute mesh, bollards, etc.)	<u>\$30,000</u>
TOTAL	\$87,000

Construction change orders for Promenade Terrace have used the \$92,000 from the Contingency Account. The majority was used for the increase in the Construction Management/General Contractor (CM/GC) contract. The original construction contract was signed for \$800,000 in July of 2000. Since that time, Staff received a grant and carry over funds to add the bridge connection to City Park, which increased the scope of work, per City Councils approval, to \$1,070,000. The nature of a Construction Management/General Contractor (CM/GC) Contract increased CoCal Landscape's fees. The remaining contingency was used for changes in some fountain wiring and holding enough contingency to make sure the fountain work and adjustment needs are covered.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment – Resolution

RESOLUTION

RESOLUTION NO. **1**

INTRODUCED BY COUNCILLORS:

SERIES OF 2002

\_\_\_\_\_

WHEREAS, City Council supports the transfer from the Foxshire Park Unauthorized account to balance various expenditure accounts due to unanticipated or additional costs, and

WHEREAS, the Foxshire Park account balance is \$170,000.

NOW, THEREFORE, be it resolved that the Westminster City Council resolves that:

\$87,000 be transferred from the Foxshire Park unauthorized account (80175050035.80400.8888) to the unauthorized account of the Promenade Terrace Project (80175050035.80400.8888)

Passed and adopted this 7th day of January 2002.

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

## Summary of Proceedings

Summary of proceedings of the regular City of Westminster City Council meeting of Monday, January 7, 2002.

Present at roll call were Mayor Moss, Councillors Atchison, Dixon, Hicks, Kauffman, McNally.

Ed Moss was sworn into office as Mayor and Herb Atchison was selected as Mayor Pro Tem and sworn into office.

The minutes of the December 17, 2001 meeting were approved.

A proclamation was presented to Mary Harlow for service and dedication to the City of Westminster; a proclamation was presented to the Jefferson County Library for their 50<sup>th</sup> Anniversary; and certificates were presented to Bob June and Dottie Urban for service on Transportation Commission.

Council approved the following: Special Real Estate Legal Counsel with Barbara Banks for \$5,000 and Inland Pacific for \$15,000; Financial Report for November, 2001; Ratification of purchase of excess Workers' Compensation Insurance for \$63,289; Concessionaire agreement with Evergreen Alliance Golf Limited for Golf Course Food and Beverages; Treated Water Computer Modeling Contract with HDR Engineering for \$145,000; and the 2<sup>nd</sup> Amended 112<sup>th</sup> & Federal Partnership PDP.

At 8:28 P.M., a public hearing was held on the 2<sup>nd</sup> Amended 112<sup>th</sup> & Federal Partnership PDP.

Council rejected Resolution No. 71 re Carter Annexation Petition for lack of sufficient name and address of current owner.

The following Councillor's Bills were adopted on second reading:

A BILL FOR AN ORDINANCE INCREASING THE 2001 BUDGETS OF THE OPEN SPACE FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2001 ESTIMATED REVENUES IN THESE FUNDS

A BILL FOR AN ORDINANCE INCREASING THE 2002 BUDGETS OF THE GENERAL, GENERAL RESERVE, DEBT SERVICE, GENERAL CAPITAL IMPROVEMENTS, UTILITY AND OPEN SPACE FUNDS AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2002 ESTIMATED REVENUES IN THESE FUNDS

A BILL FOR AN ORDINANCE AUTHORIZING AN AMENDMENT TO THE ASSISTANCE AGREEMENT WITH CHURCH RANCH BUSINESS CENTER III, LLC

A BILL FOR AN ORDINANCE INCREASING THE 2001 BUDGETS OF THE GENERAL FUND AND AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE 2001 ESTIMATED REVENUES IN THE FUND

The following Resolutions were adopted:

Resolution No. 1 re Account Transfers within Capital Improvement Projects

At 8:55 P.M. the meeting was adjourned.

By order of the Westminster City Council  
Michele Kelley, CMC, City Clerk

Published in the Westminster Window on January 17, 2002.